



MILPITAS CITY COUNCIL MEETING AGENDA

TUESDAY, NOVEMBER 3, 2015

**455 EAST CALAVERAS BOULEVARD, MILPITAS, CA
6:00 P.M. CLOSED SESSION • 7:00 P.M. PUBLIC BUSINESS**

SUMMARY OF CONTENTS

- I. CALL TO ORDER/ROLL CALL** by the Mayor (6:00 p.m.)
- II. ADJOURN TO CLOSED SESSION**
 - (1) CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION**
Pursuant to California Government Code Section 54956.9(d)(1)
Casagrande v. City of Milpitas, Santa Clara County Superior Court, Case No. 1-15-CV-280605
 - (2) CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION**
Pursuant to California Government Code Section 54956.9 - City as Defendant
 - (3) CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION**
Pursuant to California Government Code Section 54956.9 - City as Plaintiff
- III. CLOSED SESSION ANNOUNCEMENT:** Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote or abstention of each member present
- IV. PLEDGE OF ALLEGIANCE** (7:00 p.m.)
- V. INVOCATION** (Councilmember Grilli)
- VI. APPROVAL OF COUNCIL MEETING MINUTES** – October 20, 2015
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDAR** - November 2015
- VIII. PRESENTATIONS**
 - Recognition of Milpitas winners at 2015 Synopsis Championship
 - Commending Tyler Nguyen as US National Taekwondo Team Member
 - Commending Rene Briones of the Bicycle Pedestrian Advisory Commission
- IX. PUBLIC FORUM**

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. However, the Council may instruct the City Manager to place the item on a future meeting agenda.

- X. ANNOUNCEMENTS**
- XI. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

XII. APPROVAL OF AGENDA

XIII. CONSENT CALENDAR (Items with asterisks*)

Consent calendar items are considered to be routine and will be considered for adoption by one motion. There will be no separate discussion of these items unless a member of the City Council, member of the audience, or staff requests the Council to remove an item from or be added to the consent calendar. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar. If removed, this item will be discussed in the order in which it appears on the agenda.

XIV. PUBLIC HEARING

- 1. Conduct a Public Hearing and Introduce Ordinance No. 38.823 Relating to Special Events and Activities (Staff Contact: Cindy Hom, 408-586-3284)**

XV. UNFINISHED BUSINESS

- * 2. Receive the Update of the Odor Control Report (Staff Contact: Steven Machida, 408-586-3355)**

XVI. REPORTS OF MAYOR AND COMMISSION

- * 3. Consider Mayor's Recommendation for Appointment to City Commission (Contact: Mayor Esteves, 408-586-3029)**
- * 4. Receive and Approve Mayor's Request to Form a City Council Communications Subcommittee and Appoint Mayor Esteves and Councilmember Grilli to this Subcommittee (Staff Contact: Mayor Esteves, 408-586-3029)**
- * 5. Per Recommendation of the Milpitas Arts Commission, Authorize Award of Milpitas Arts and Culture In-Kind Grants for FY 2015-16 (Staff Contact: Jaime Chew, 408-586-3234)**

XVII. NEW BUSINESS

- 6. Receive a Presentation from PG&E Regarding a Safety Program Related to High Pressure Underground Pipelines and High Voltage Overhead Transmission Lines (Staff Contact: Bill Ekern, 408-586-3273)**
- * 7. Approve City Council Meeting Schedule for 2016, Including Additions in July and December (Staff Contact: Mary Lavelle, 408-586-3001)**
- * 8. Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended September 30, 2015 (Staff Contact: Emma Karlen, 408/586-3145)**
- * 9. Receive Financial Status Report for the Three Months Ended September 30, 2015 (Staff Contact: Emma Karlen, 408-586-3145)**

XVIII. RESOLUTION

- * 10. Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for Automated Water Meter (Phase 1), Project No. 7121, and Granting Authorization to the Director of Engineering/City Engineer to Issue the Notice of Final Acceptance after the One-Year Warranty Period and to Release the Performance Bond (Staff Contact: Steve Erickson, 408-586-3301)**

XIX. AGREEMENT

- * 11. Approve and Authorize the City Manager to Execute an Agreement with Verde Design Inc. for the Milpitas Sports Center Sports Fields, Project No. 5104, to Provide Construction Management Support (Staff Contact: Steve Erickson, 408-586-3301)

XX. DEMAND

- * 12. Receive a Report of Emergency Erosion Repair of Wrigley-Ford Creek and Authorize Payment to Preston Pipelines for Project No. 3700 (Staff Contact: Steve Machida, 408-586-3355)

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, NOVEMBER 17, 2015**

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035

The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website www.ci.milpitas.ca.gov by selecting the Milpitas Municipal Code link.

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and on the City website. Phone 408-586-3040

All City Council agendas and related materials can be viewed online here:
www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

Current Vacancies on

Sister Cities Commission (2 vacancies)
Veterans Commission (2 vacancies)

Commission application forms are available online at www.ci.milpitas.ca.gov or at Milpitas City Hall. Contact the City Clerk's office at 408-586-3003 for more information.

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, call the City Clerk at 408-586-3001 or send an e-mail to mlavelle@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the City Council Chambers for all meetings in that facility.

AGENDA REPORTS

XIV. PUBLIC HEARING

1. Conduct a Public Hearing and Introduce Ordinance No. 38.823 Relating to Special Events and Activities (Staff Contact: Cindy Hom, 408-586-3284)

Background: In January 1971, the City Council adopted Ordinance No. 161 establishing code provisions for Entertainment Events. The Ordinance covered community-based events such as circuses, festivals, and carnivals. Previously, entertainment events were submitted to the City Clerk's office for permitting and approved by City Council.

In April 2010, the City Council adopted Ordinance 38.795 which repealed Title III, Chapter 5 "Entertainment Events" and reassigned the review and permitting responsibility to the Planning Division. It also codified the review requirements and standards for special activities, special events and other similar outdoor events.

Based on public feedback regarding the City's permit process and direction from the Planning Commission Subcommittee, staff reviewed the Ordinance to determine if changes were recommended.

Here is a summary of the proposed zoning text amendments. Ordinance No. 38.823

- Clarifies the regulatory framework for permitting "Special Events," as defined in the ordinance,
- Establishes a criteria for characterizing events as "Special Events,"
- Adopts standards and conditions for approving and permitting "Special Events," and
- Provides timeframes for permit decisions and clarifies process for denials, appeals or revocations.

On October 14, 2015, staff presented the proposed amendments to the Planning Commission. After the public hearing, Commissioners voted 5-2 to recommend approval to the City Council. Additional information, including the October 14, 2015 Planning Commission Agenda Report, Meeting Minutes and draft Ordinance, is included in the agenda packet. In conclusion, the proposed Zoning Text Amendment creates clear and concise zoning code provisions for Special Events to ensure all special events are conducted in a safe and orderly fashion to benefit all those who live in and visit the City of Milpitas.

Fiscal Impact: None.

Recommendations:

1. Open the public hearing to receive comments.
2. Move to close the public hearing following any comments.
3. Following the City Attorney reading aloud the title of Ordinance No. 38.823, move to waive the first reading beyond the title of the ordinance.
4. Move to introduce Ordinance No. 38.823 amending the City of Milpitas Zoning Code to include provisions relating to special events and activities.

XV. UNFINISHED BUSINESS

*** 2. Receive the Update of the Odor Control Report (Staff Contact: Steven Machida, 408-586-3355)**

Background: From September 14 through October 11, 2015, the Bay Area Air Quality Management District (BAAQMD) forwarded 243 complaints originating in Milpitas. 101

complaints identified a garbage odor, 14 complaints identified a sewage odor, 127 complaints did not identify an odor source, and one identified multiple odor sources. As of the last Council update, the City's odor reporting website received 64 reported complaints.

Recommendation: Receive the update of the Odor Control Report.

XVI. REPORTS OF MAYOR AND COMMISSION

- * 3. Consider Mayor's Recommendation for Appointment to City Commission (Contact: Mayor Esteves, 408-586-3029)**

Background: Mayor Esteves recommends one appointment to the Economic Development Commission: newly appoint Raghu Reddy as the Alternate No. 2 to a term that will expire in April of 2016. A copy of Mr. Reddy's Commission application is included in the Council agenda packet.

Recommendation: Receive Mayor's recommendation, and move to approve one new appointment to the Economic Development Commission.

- * 4. Receive and Approve Mayor's Request to Form a City Council Communications Subcommittee and Appoint Mayor Esteves and Councilmember Grilli to this Subcommittee (Staff Contact: Mayor Esteves, 408-586-3029)**

Background: At the October 6, 2015 City Council meeting, Council authorized the work plan and consultant agreement to assist with implementation of a new communications plan. It was identified that the City was in need of a person or firm with experience in media relations, preparation of press releases, quarterly newsletters, annual reports, positive City promotions and communications to the public.

As a means to further implement the communications plan, formation of a City Council Subcommittee is essential. The purpose of the subcommittee will be to review news and media press releases, annual and quarterly reports and other types of mass media and public communication drafts prepared for public release. It is envisioned that this new Council Subcommittee will meet quarterly, or as needed, with most of the review of publications performed electronically by the Subcommittee. The Subcommittee will also be instrumental in recommending further changes to the communications work plan and policies to the full City Council in the future.

Recommendation: Receive Mayor's recommendation to form a City Council Communications Subcommittee and appoint Mayor Esteves and Councilmember Grilli as Subcommittee members.

- * 5. Per Recommendation of the Milpitas Arts Commission, Authorize Award of Milpitas Arts and Culture In-Kind Grants for FY 2015-16 (Staff Contact: Jaime Chew, 408-586-3234)**

Background: The Milpitas Arts and Culture Grant Program (MACG) is an in-kind grant program offering support to individuals and organizations hosting cultural or artistic events in the City of Milpitas. In-kind support includes performance space (i.e. Community Center or Senior Center) and City staff support. All events supported by the grants are held in Milpitas between the months of November 2015 through October 2016 and are open to the public at little or no cost.

Two applications were submitted for MACG for the 2015-16 grant cycle. One is from the Filipino American Association of Milpitas, Inc. (Fil-Am) for the annual Filipino-American Fiesta on Saturday, June 11, 2016 and the other is from South Bay Kids for the "We've Got the Music" concert on Sunday, June 12, 2016. The Arts Commission reviewed and approved both applications at its meeting on September 28, 2015. Commissioners have recommended that the

City Council approve both applications and award the grants. The estimated value of an individual in-kind grant is \$500 - \$2,200.

Fiscal Impact: None. Costs for the program are budgeted within the Recreation Services FY 2015-16 budget.

Recommendation: Approve two applications for the Milpitas Arts and Culture Grant program and award grants to Filipino American Association of Milpitas, Inc. and South Bay Kids for in-kind performance space at City facilities and City of Milpitas staff support for the Fil-Am Fiesta and We've Got the Music concert.

XVII. NEW BUSINESS

- 6. Receive a Presentation from PG&E Regarding a Safety Program Related to High Pressure Underground Pipelines and High Voltage Overhead Transmission Lines (Staff Contact: Bill Ekern, 408-586-3273)**

Background: Pacific Gas & Electric (PG&E) has developed a Transmission Right of Way Stewardship Effort that has a federal compliance deadline for work to be completed by December 31, 2015. These programs are in response to concerns identified as a result of the San Bruno gasline explosion. PG&E advises staff that it needs to begin mobilization for the Transmission Right of Way Stewardship Effort by mid-November 2015.

Fiscal Impact: There are no fiscal impacts associated with this presentation.

Recommendation: Receive the presentation from PG&E staff and provide comments, as appropriate.

- * 7. Approve City Council Meeting Schedule for 2016, Including Additions in July and December (Staff Contact: Mary Lavelle, 408-586-3001)**

Background: The Milpitas Mayor and City Council are requested to consider and adopt their meeting schedule for 2016. Regarding the City Council's summer time meeting dates, it has been tradition to cancel both of the July regular Milpitas City Council meeting dates.

In addition, new legislation affecting California Elections Code has changed the length of time that the local Registrar of Voters is mandated to complete certified election results. Formerly, that happened within 28 days of an election and now the timeframe by law is within 30 days following an election. So in December, swearing-in of newly elected officials can happen no sooner than 30 days following the municipal election on November 8, 2016. Tuesday, December 13, 2016 is suggested as a Special Meeting date.

In June, the City is anticipated to have at least one measure on the scheduled statewide primary election ballot on June 7, 2016. Election results for the ballot measure would not be available for City Council to accept and adopt until at least 30 days following the election - on July 7 or later.

City staff has begun to prepare year-long calendars for next year and have inquired of the City Council as to what schedule will be followed in 2016. Staff requests that the City Council act on an affirmative meeting schedule for 2016 for its regular business meetings and additional special meetings regarding election results.

A copy of the 2016 schedule is included in the Council agenda packet.

Recommendation: Move to approve the 2016 City Council meeting schedule.

*** 8. Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended September 30, 2015 (Staff Contact: Emma Karlen, 408/586-3145)**

Background: In compliance with the State of California Government Code and the City's Investment policy, the City of Milpitas Investment Report for the quarter ended September 30, 2015 is submitted for the Council's review and acceptance.

The Portfolio Summary Report included in the Council's packet provides a summary of the City's investments by type. It lists the par value, market value, book value, percentage of portfolio, term, days to maturity and the equivalent yields for each type of investment. The Portfolio Details Report provides the same information for each individual investment in the City's portfolio as of September 30, 2015.

As of September 30, 2015, the principal cost and market value of the City's investment portfolio was \$152,869,838 and \$153,400,751 respectively. When market interest rates increase after an investment is purchased, the market value of that investment decreases. Conversely, when market interest rates decline after an investment is purchased, the market value of that investment increases. If the investments are not sold prior to the maturity date, there is no market risk. Therefore, in accordance with the City's investment policy, all investments are held until maturity to ensure the return of all invested principal.

The City's effective rate of return for the period ended September 30, 2015 was 0.84%. The comparative benchmarks for the same period were 0.34% for LAIF (Local Agency Investment Fund) and 0.60% for the 12-month average yield of the 2-year Treasury Note. The weighted average maturity of the portfolio was 558 days.

The investment portfolio is in compliance with the City's investment policy. A combination of securities maturing, new revenues, and tax receipts will adequately cover the anticipated cash flow needs for the next six months. Cash flow requirements are continually monitored and are considered paramount in the selection of maturity dates of securities.

The market values of the securities were provided by BNY Mellon, the safekeeping bank of the City's securities. All the securities owned by the City are held in the trust department of BNY Mellon under the terms of a custody agreement.

Three charts are included with the agenda packet that show investment by maturity levels, comparison of the City's portfolio yields to other benchmark yields as well as a trend of the type of securities in the City's portfolio, weighted average maturity and average yield.

Fiscal Impact: None

Recommendation: Receive the investment report for the quarter ended September 30, 2015.

*** 9. Receive Financial Status Report for the Three Months Ended September 30, 2015 (Staff Contact: Emma Karlen, 408-586-3145)**

Background: As of September 30, 2015, the General Fund received approximately \$9 million in revenue. Total revenue is projected to be \$72.5 million for the fiscal year. This September year-to-date amount is \$0.6 million more than the revenues received for the same period in FY 14-15 primarily due to increased sales tax revenue, charges for services, and transient occupancy tax revenue. Sales tax revenue was up by about \$645,000 from the same period last year. However, it is too early to predict whether sales tax revenue will exceed or decrease below budget as there may be one-time revenues or corrections that may not recur in future quarters. Transient Occupancy Tax (hotel tax) increased over last year by about \$140,000. Charges for services increased by \$269,000 over last year due to increased private job activities. Staff anticipated that the overall General Fund revenue will be on track with the budget projection.

City departments' expenditures in the first quarter were also on track with their budgets. Overall expenditures were at about 24% of the \$77.2 million operating budget. It should be noted the expenditures for several departments exceeded 25% for the first three months. However, these spending patterns are typical due to various invoices that need to be paid at the beginning of the fiscal year instead of being able to spread out throughout the year. Examples of such expenditures include workers compensation insurance premium which was paid from the Human Resources budget and software license maintenance fees which were paid from the Information Services Department budget. Non-departmental expenditures also exceeded 25% of the budget due to timing difference for reimbursements from the CalPERS California Employers' Retiree Benefit Trust Fund for retiree medical benefit payments.

Fiscal Impact: None.

Recommendation: Receive the financial status report for the three months ended September 30, 2015.

XVIII. RESOLUTION

- * 10. Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for Automated Water Meter (Phase 1), Project No. 7121, and Granting Authorization to the Director of Engineering/City Engineer to Issue the Notice of Final Acceptance after the One-Year Warranty Period and to Release the Performance Bond (Staff Contact: Steve Erickson, 408-586-3301)**

Background: The City Council awarded the Automated Water Meter Project (Phase 1) to Preston Pipelines, Inc. on June 16, 2015. The project provided for the replacement of old water meters servicing the Pioneer and Friendly Village Mobile Home Parks on Dixon Landing Road and Mobilodge on North Milpitas Boulevard. A total of three automated water meters, including associated piping, valves and meter vaults were installed.

The project was successfully completed on time and under budget. Staff recommends the City Council adopt a resolution granting initial acceptance of the project and authorize the reduction of the contractor's faithful performance bond to \$33,330.78, which is 10% of the final contract value. Staff also recommends the City Council authorize the City Engineer to issue the Notice of Final Acceptance and to release the performance bond after the one year warranty period without further Council action, provided all warranty work is completed to the satisfaction of the City Engineer.

Alternative: Failure to adopt the resolution would result in the project not being accepted and would result in the Notice of Completion not being filed and a potential delay claim by the contractor.

Fiscal Impact: None.

Recommendation: Adopt a resolution:

1. Granting initial acceptance of the Automated Water Meter (Phase 1), Projects No. 7121, subject to a one year warranty period, and reduction of the faithful performance bond to \$33,330.78; and
2. Granting authorization to the Director of Engineering/City Engineer to issue the notice of final acceptance after the one-year warranty period and to release and discharge the performance bond without further City Council action.

XIX. AGREEMENT

- * 11. **Approve and Authorize the City Manager to Execute an Agreement with Verde Design Inc. for the Milpitas Sports Center Sports Fields, Project No. 5104, to Provide Construction Management Support (Staff Contact: Steve Erickson, 408-586-3301)**

Background: On August 18, 2015, the City entered into a consultant agreement with Verde Design Inc. in the amount of \$325,000 to provide design services for the Milpitas Sports Center Sports Fields. The project provides for installation of a new synthetic turf multi-purpose field providing for football and soccer, and a smaller youth soccer field. Various amenities are also included in the project, such as new stadium lighting, loudspeaker system, score board, fencing, goal posts, removal of the visitor bleacher and code improvements to the home bleacher, and installation of a decomposed granite walking path around the new fields.

Due to the tight construction schedule, staff is seeking approval for Verde Design Inc. to perform construction management support services to aid City staff in completion of this project. Staff negotiated a scope and fee for these services not to exceed \$137,500, which is approximately 5% of the estimated construction cost. For most projects, construction management costs typically range between 8-10% of the construction cost.

Alternative: Denial of this request would result in not completing construction of the project before the 4th of July events at the Milpitas Sports Center.

California Environmental Quality Act: This project is categorically exempt under Section 15301 of the CEQA guidelines for maintenance of existing facilities.

Fiscal Impact: None.

Recommendation: Approve the agreement with Verde Design Inc. in the amount of \$137,500 for the Milpitas Sports Center Sports Fields, Project No. 5104 to provide construction management support.

XX. DEMAND

- * 12. **Receive a Report of Emergency Erosion Repair of Wrigley-Ford Creek and Authorize Payment to Preston Pipelines for Project No. 3700 (Staff Contact: Steve Machida, 408-586-3355)**

Background: In 2012, the City received permits from the Regional Water Quality Control Board (RWQCB), U.S. Department of the Army Corps of Engineers (ACOE), and the Department of Fish & Wildlife to dredge the City owned Wrigley-Ford Creek. Permit conditions required the City to provide onsite riparian and wetland mitigation planting, and ecological monitoring and reporting on those sites for a period of ten years, and for the City to make repairs and improvements to the creek in the event of damage at the location of the project and mitigation areas.

The December 2014 winter storms and flooding caused considerable erosion damage along an 80 foot stretch of the riparian mitigation area along Wrigley-Ford Creek that had been planted in 2012. The storm damage caused several large gullies from which sediment and plantings were washed away into the creek. The damage was assessed by staff and H.T. Harvey & Associates was hired to complete the design and obtain the necessary permits for the channel erosion repair.

As mandated prior to the start of the work, a nesting bird survey was performed. No nests were found. However, several migratory bird species were present during the survey so as a part of the permit requirements, the channel repair needed to be performed outside of the nesting bird season from February 1 through August 31. In addition, the Army Corps of Engineers will not allow work within the creek during the wet season from October 15 through April 15. Therefore,

conditions of the state and federal permits obligated the City to repair the damage between September 1 and October 14, 2015.

Due to the short construction time period, the Director of Public Works had the work performed under his emergency authority to complete the improvements prior to the 2015 winter storms. Preston Pipelines, Inc. was hired to complete temporary storm damage repairs to Wrigley-Ford Creek and the cost for this work was \$70,479.00. The work was completed on October 5, 2015 and included installation of a drop inlet including 35 linear feet of 12-inch diameter drain pipe, grading and re-seeding of the erosion area, to prevent further erosion damage, repair of damaged irrigation, and the removal of trash and debris that had been deposited in the creek by the storms. This is a temporary solution as recommended by the permitting agencies to get the City through the next winter season. Staff will monitor the site and work with the permitting agencies for approval of a larger and more permanent repair that could be completed, if necessary, with new permits in the future.

Fiscal Impact: None.

Recommendation: Receive report of emergency erosion repair of Wrigley-Ford Creek, Project No. 3700 and authorize payment of invoices for this work to Preston Pipelines.

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, NOVEMBER 17, 2015**

October 2015						
S	M	T	W	T	F	S
	4	5	6	7	1	2
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

December 2015						
S	M	T	W	T	F	S
			1	2	3	4
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

MILPITAS CITY COUNCIL CALENDAR

November 2015

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1 4:00 PM -City Council / MUSD School Board Joint Communication Committee (CM & MG) 7:00 PM -Parks, Recreation & Cultural Resources Commission (GB)	2	3 6:00 PM -Closed Session 7:00 PM -City Council	4 7:30 AM -Santa Clara VTA Northeast Group (JE) 7:00 PM -Community Advisory Commission (CM)	5 5:30 PM -Santa Clara VTA Board of Directors (JE) 5:30 PM -Milpitas Chamber of Commerce Board (DG) 7:00 PM -Bicycle Pedestrian Advisory Commission (CM)	6	7
8 4:00 PM -Economic Development Commission (CM)	9	10	11 9:00 AM Veterans Day City Event All City Departments closed for Holiday 	12 4:00 PM -Santa Clara VTA Policy Advisory Committee (CM) 7:00 PM -Cities Assoc of SCC (JE) 7:00 PM -Youth Advisory Commission (DG)	13	14
15 7:00 PM -Telecommunications Commission (GB) 7:00 PM -Library Advisory Commission (CM) 7:00 PM -Arts Commission (DG)	16	17 6:00 PM -Closed Session 7:00 PM -City Council	18 7:00 PM -Planning Commission	19 10:00 AM -Santa Clara VTA Congestion Management Program & Planning Committee (JE) 4:00 PM -Treatment Plant Advisory Committee (JE) (San Jose) 6:00 PM -Sister Cities Commission (MG) 7:00 PM -Bay Area Water Supply Conservation Agency (Foster City-JE) 7:00 PM -Emergency Preparedness Commission (MG)	20	21
22	23	24	25	26 and 27 THANKSGIVING DAY All City Departments closed for Holiday 		28
29 7:00 PM Outdoors at Civic Center: Holiday Tree Lighting & Celebration 	30					

**Draft MEETING MINUTES
CITY OF MILPITAS**

Minutes of: Regular & Special Meetings of Milpitas City Council
Date: Tuesday, October 20, 2015
Time: 6:00 PM Closed Session / 7:00 PM Open
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

CALL TO ORDER

Mayor Esteves called the meeting to order at 6:00 PM. City Clerk noted the roll.

PRESENT: Mayor Esteves, Vice Mayor Montano, Councilmembers Giordano and Grilli

ABSENT: Councilmember Barbadillo was absent at roll call and arrived at 6:01 pm.

CLOSED SESSION

City Council convened in Closed Session to discuss five litigation matters.

City Council then convened in Open Session at 7:08 PM.

ANNOUNCEMENT

No announcement out of closed session.

PLEDGE

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

INVOCATION

Councilmember Barbadillo read aloud a prayer to start the meeting.

MEETING MINUTES

Motion: to approve the minutes of two October 6, 2015 City Council meetings, as amended

City Clerk Mary Lavelle announced edits to each set of meeting minutes:

- 1) on Study Session, Commissioner Larry Ciardella was absent (not present, as noted)
- 2) on Regular Meeting, page 2 near the top of the page, in reference to a luncheon fundraiser at Outback Steakhouse: it was hosted by Rotary Club (not Kiwanis, as noted)

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

SCHEDULE OF MEETINGS

Motion: to approve Council Calendars/Schedules of Meetings for October and November 2015

City Manager Williams reported that the Treatment Plant Advisory Committee meeting in San Jose scheduled originally on November 12 was moved to November 19 at 4:00 PM.

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

PRESENTATIONS

Mayor Esteves made several presentations at the meeting.

- 1) Commended those who celebrated *Filipino American Heritage month* at the Senior Center on Saturday, October 10. He offered thanks to those who organized a showing of the film "Delano Manongs" and heard remarks from the son of Larry Itliong, subject of the film. A proclamation for Filipino American Month was received by Councilmember Barbadillo.

- 2) Proclaimed CPR Awareness Month for October. Deputy Fire Chief Rick Frawley accepted the proclamation, and encouraged residents to visit local fire stations in Milpitas for drop-in “hands-only” CPR training on Saturday, October 24, 2015.
- 3) Proclaimed *Helping Mentally Challenged People Days*, October 16 – 17 by two Knights of Columbus Councils in Milpitas, whose representatives accepted the proclamations.
- 4) Presented to homeowners the Annual Neighborhood Beautification awards, as selected by the Community Advisory Commission.

At 8:00 PM, Mayor Esteves announced that all were welcome to a reception in the lobby to celebrate the Award winners and Filipino American Month. The meeting reconvened at 8:18 PM.

PUBLIC FORUM

Syed Mohsin, member of the Community Advisory Commission, announced that the CAC and Lions Club, were holding an event on Sunday, October 25 at Seasons Marketplace on Landess, “Make A Difference Day” from 10:00 AM to 4:00 PM, with several city public safety staff. It was an open and free event for the community.

Two men, Milpitas residents, addressed the Council by requesting no contract renewal for Republic Services, deemed a public nuisance. They sought the closure of the landfill at Newby Island. One of the men felt the rate for garbage service was much too high, especially compared to neighboring communities and that odor from that site continued to be very bad.

Robert Marini, Milpitas resident, commented on the Prop. 218 Notice regarding water rates that was planned to go out to all ratepayers. He sought more information to be printed on the notice related to how rates were calculated.

Tom Valore, 670 Cardiff Place, wondered if one member would clarify what was appropriate communication for those interested in the hauling and disposal contracts, and the selection of winners of the contract award (re: RFP for solid waste services). He wondered how those communications could affect the outcome, and reach a fair conclusion.

Voltaire Montemayor, Milpitas resident, talked about his family in the Phillipines and that CPR could save a life, so it was important to learn.

ANNOUNCEMENTS

City Manager Tom Williams introduced the City’s new Human Resources Director Tina Murphy, who started her new assignment with the City on this date.

Mr. Williams asked Recreation Services Manager Renee Lorentzen to explain the online survey that started on this date for the proposed new McCandless Park, seeking input from residents. He also encouraged everyone in the community to participate in the survey and give their input.

Mayor Esteves mentioned the national Mayor’s challenge for water conservation in 2015. Good success was reported for Milpitas, with pledges made online.

Mayor Esteves also noted the unfortunate recent death of a young woman in the community. The family sought donations following her passing. He then read aloud the GoFundMe online information from the newspaper and asked staff to place this request on the website.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. None were reported.

APPROVAL OF AGENDA

Motion: to approve the meeting agenda, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of:

AYES: 5
NOES: 0

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

Vice Mayor Montano asked to remove agenda item no. 6 (grand jury response letter) from the consent calendar.

Mayor Esteves asked a question about the fee waiver request from the Rotary Club and City Clerk confirmed that it was the first and only fee waiver request from that organization this year.

Motion/Second: Councilmember Grilli/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

*2. Commission Appointments

Arts Commission: re-appointed Nicole Phan to a new term of three years to a term that will expire in October 2018.

Recycling and Source Reduction Advisory Commission: re-appointed Kashmir Gill to a new term of three years that will expire in October of 2018.

Sister Cities Commission: re-appointed Peter Chang to a new term of three years that will expire September 2018.

*4. Out of State Training

Authorized out of state travel for Milpitas Fire Department administrative staff to attend the Kronos Inc. Telestaff conference in Las Vegas from November 16–18, 2015.

*5. Waive Fees for Pumpkin Patch

Per request from the Milpitas Rotary Club, approved fee waiver of Planning, Fire and Building fees totaling \$973.65 for the Rotary's Pumpkin Patch scheduled October 16 – November 2, 2015.

*7. Adopt Ordinance

Waived the second reading and adopted Ordinance No. 240.4 removing supplemental water penalties per state law.

*8. Resolution

1) Adopted Resolution No. 8507 amending the Classification Plan adding one Assistant City Engineer in the Engineering Land Development Division and one Assistant Transportation Planner in the Engineering Traffic Division.
2) Approved a budget appropriation from the General Fund and the TASP fees fund in the amount of \$62,500 respectively for the Assistant Transportation Planner into the Engineering Traffic Division budget.

*9. Amendment to Fee Credit Agreement - Milpitas Station

Approved the First Amendment to the Fee Credit Agreement for Transit Area Specific Plan Public Facilities and Public Improvements with Milpitas Station (San Jose) Venture.

UNFINISHED BUSINESS

1. Public Hearing on vacation of Utility Easement

City Engineer Steven Machida explained the reason that City Council was requested to approve the summary vacation of a Public Service Utility Easement at Railroad Court next to the Union Pacific Railroad. This was not property that the City would develop or use for any public services. It was to be acquired by Santa Clara Valley Transportation Authority, related to the BART extension project. Following the public hearing, the City Council was requested to adopt a resolution for this action.

Mayor Esteves asked about what would occur if the vacation was not executed, and what consequences for the city if the easement was maintained by the City. Mr. Machida responded to several questions from the Mayor and Councilmember Barbadillo on the disposition of the property and why the action was needed.

Next, Mayor Esteves opened the public hearing for comments.

Robert Marini, Milpitas resident, inquired as to why the City did not sell this property to BART or VTA.

Voltaire Montemayor, Milpitas resident, said all the parties needed to talk: the City, VTA and BART. He urged the agencies to play it safe, and have no litigation.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Councilmember Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

Mayor Esteves said he would have to trust staff about this action to give away the land, the easement. He wanted it to be advantageous for the City.

(2) Motion: to adopt Resolution No. 8506 summarily vacating a portion of the Public Service Utility Easement (PSUE) along the Northerly Projection of Railroad Court and parallel to Union Pacific Railroad

Motion/Second: Councilmember Giordano/Councilmember Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

REPORT

One item was approved on the consent calendar.

3. Library Advisory Commission Work plan

Library Advisory Committee Chairman Elpido Estioko addressed the City Council and first announced who all the members on the Commission were and displayed photos of the Commissioners, from the city website.

Five accomplishments by the Commission during the last year were highlighted. Those included adoption of a donation policy, construction of a four-tier donation board, library flyers about the programs, a Filipino memorial project mural and the essay contest for students.

Milpitas Library Steve Fitzgerald announced a very special art exhibit coming to Milpitas Library this fall due to a special grant by the Smithsonian Institution. The exhibit is titled "What it Means to be Human." The student essay contest will be tied in to the special exhibit later this fall, scheduled November 25 to December 13, 2015.

Vice Mayor Montano complimented the work of the Library Advisory Commissioners, where she served as the Councilmember liaison. She noted the Milpitas Library was the most utilized facility in the County.

Motion: to approve the report from the Commission Chair and adopt the Library Advisory Commission workplan for the coming year

Motion/Second: Vice Mayor Montano/Councilmember Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

NEW BUSINESS

Two items were approved on the consent calendar.

6. Reply to Grand Jury

Vice Mayor Montano wanted to inform the public about climate change and its impact on slowly rising sea change. City Manager Tom Williams responded, with background on what the Grand Jury inquired about and City of Milpitas actions planned to deal with the impending rise over coming decades.

Motion: to authorize the Mayor to send the proposed response letter regarding the issue of sea level rise and the City's response to the Santa Clara County Civil Grand Jury

Motion/Second: Vice Mayor Montano/Councilmember Grilli

Mayor Esteves invited comments from audience.

Robert Marini, Milpitas resident, said there would be water intrusion. He asked if they knew about water subsidence, if drilling wells for water services that could occur and that would make it disastrous for residents.

Voltaire Montemayor, Milpitas resident, said sometimes there was a high tide, which would cause problems farther into the bay when there was heavy rain with high tides. There was a concern for flooding then.

Motion carried by a vote of: AYES: 5
NOES: 0

RESOLUTION

One Resolution was adopted on the consent calendar.

ORDINANCE

One Ordinance was adopted on the consent calendar.

AGREEMENT

One item was approved on the consent calendar.

ADJOURNMENT

Mayor Esteves adjourned the City Council meeting at 9:30 PM.

*Meeting minutes respectfully submitted by
Mary Lavelle, City Clerk*

List of Attachments for Public Hearing No. 01
– Ordinance No. 38.823 – Special Events

Attachments:

- 01-A Ordinance No. 38.823 (1st reading – redlined version)
- 01-B October 14, 2015 Planning Commission Staff Report
- 01-C October 14, 2015 Planning Commission Meeting Minutes
- 01-D Planning Commission Resolution No. 15-017

PLEASE NOTE:

This copy of Ordinance No. 38.823 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: 38.823

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 10 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE (ZONING CODE), SECTIONS 2, 13.11, AND 24.04, TABLES 57.04-1 AND 64.02-1, AND ADDING SECTION 15, RELATING TO SPECIAL EVENTS AND ACTIVITIES

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____ and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, Title XI, Chapter 10, entitled “Zoning” of the Milpitas Municipal Code sets forth the Zoning standards for the City of Milpitas; and

WHEREAS, the City Council recognizes that special events and activities such as festivals, carnivals, celebrations, and athletic events enhance the quality of life for residents and visitors alike, and provide substantial economic benefits related to additional tourism; and

WHEREAS, the use of City streets and other City-owned or controlled properties by large groups cause wear and tear on such properties and requires City staff time to provide coordination; and

WHEREAS, such special events have may have the potential to expose neighboring residents to excessive noise and traffic; and

WHEREAS, the City Council wishes to ensure that all special events are conducted in a safe and orderly fashion to benefit all those who live in and visit the City of Milpitas by establishing a structured process for permitting the use of public facilities and the staging of outdoor special events conducted by the private sector to use City streets, facilities or services, or to conduct events that occupy, impact or consume public resources as a result of the congregation of people; and

WHEREAS, uniform procedures promote and protect the rights of those organizing special events, those participating in them, and those living and working nearby; and

WHEREAS, the Milpitas Zoning Code, Chapter 10 of Title XI of the Milpitas Municipal Code, is proposed to be amended to add a new Section 15 entitled “Special Events and Activities” and to make other necessary revisions to ensure consistency regarding Special Events references throughout the Zoning Code as set forth herein; and

WHEREAS, on May 13, 2015, the Planning Commission Subcommittee reviewed staff’s proposed process improvements and recommended proposed changes to the Planning Commission; and

WHEREAS, on June 10, 2015, the Planning Commission conducted a duly-noticed public hearing and received a report recommending the amendment of the Milpitas Zoning Code to better address the Special Event Permit process; and

WHEREAS, on October 14, 2015, the Planning Commission conducted a duly noticed public hearing meeting and adopted Resolution No. 15-017, recommending the City Council amend the Milpitas Zoning Code to (i) delete the definition of “Special Events” from Section 2 “Definitions”; (ii) amend Section 13 “Special Uses” to delete the existing special event provisions; (iii) add a new Section 15 entitled “Special Events and Activities”; (iv) amend Section 24 “Signs” to delete reference to Section 13 “Special Uses” and add a new reference to the new Section 15 “Special Events and Activities;” (v) delete the reference to “Special Events and Activities” in Table 57.04-1 “Applications;” and (vi) add a new reference to “Special Event Permits” to Table 64.02-1 “Development Review Process”; and

WHEREAS, on November 3, 2015, the City Council conducted a duly-noticed public hearing to consider the recommendation from the Planning Commission to amend the Zoning Code as stated herein; and

WHEREAS, the City Council finds that with the inclusion of the herein stated amendments to the Zoning Code, the Zoning Code remains internally consistent; and

WHEREAS, the City Council finds the proposed Zoning Code text amendments are categorically exempt pursuant to Section 15061 of the California Environmental Quality Act (CEQA) Guidelines. The activity is covered by

the general rule that CEQA applies only to projects which have the potential for causing significant effects on the environment.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals and findings set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. SPECIFIC FINDINGS

Zoning Text Amendment (Section XI-10-57.02.G.3) - The City Council makes the following findings based on the evidence in the public record in support of Zoning Text Amendment No. ZA15-0004:

Zoning Text Amendment (Section XI-10-57.02.G.3)

1. The proposed amendment is consistent with the General Plan.

The proposed Ordinance is consistent with and implements the City of Milpitas' General Plan. The Ordinance promotes and encourages events for the greater good and cultural diversity of the city and establishes a structured process for permitting special events and activities that insures the city, residents and visitors have adequate notice of proposed events and activities and that the events and activities are properly planned and coordinated.

The project is also consistent with the following General Plan Guiding Principles and Policies:

- Implementing Policy No. 2.a-I-7 Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.
- Implementing Policy No. 2.d-G-2 - Develop adequate civic, recreational, and cultural centers in locations for the best service to the community and in ways which will protect and promote community beauty and growth.

2. The proposed amendment will not adversely affect the public health, safety and welfare of the residents of Milpitas.

The proposed zoning amendment will include provisions to ensure public health, safety, and the general welfare standards are met for special events and activities. The zoning provisions will provide requirements; establish permit application filing procedures, and provisions for permit approvals and denials.

SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10 (ZONING)

Section XI-10-2.03 entitled "Definitions" of the Milpitas Municipal Code is amended to delete the definition of "Special Events and Activities" entirely.

~~"Special events and activities" means any temporary event or activity sponsored by a business, shopping center or organization which is held outside the confines of a permanent building.~~

Subsections XI-10.13.11.G through J, inclusive, of the Milpitas Municipal Code are amended and renumbered as follows:

~~G. Special Events and Activities.~~

~~1. Special events and activities may be permitted, subject to the following regulations:~~

- a. ~~Authorization. Written authorization for the special event and activity shall be obtained from the property owner.~~
- b. ~~Location. Special events and activities may be located on non-residential private property, and public rights of way.~~
- c. ~~Review Requirements. Special Events and Activities shall require the approval of a Minor Site Development Permit, in accordance with Table XI-10-13.11-2, Review Requirements for Special Events and Activities, and Section 57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.~~

~~Table XI-10-13.11-2
Review Requirements for Special Events and Activities~~

Threshold for review—Number of days the activity will occur during a calendar year	Planning Staff	Planning Commission Subcommittee
One to three days	X	
With amplified or acoustical sound or live entertainment		X
Four to seven days		X
With amplified or acoustical sound or live entertainment		X

- d. ~~Number of Occurrences. Special events and activities shall be limited to four (4) occurrences and up to twenty-eight (28) cumulative days during a calendar year. A minimum thirty (30) days shall lapse between occurrences.~~

~~A single annual review is acceptable for multiple requests of up to four (4) occurrences and may be approved by the Planning Commission Subcommittee, so long as the dates for the occurrences are provided and adhered to by the applicant.~~

- e. ~~Exceptions: Exceptions may be granted through the approval of a Conditional Use Permit by the Planning Commission in the following instances:~~
 - i. ~~Waiver of the minimum lapse period.~~
 - ii. ~~Waiver of limit on number of occurrences.~~
- f. ~~Other Requirements:~~
 - i. ~~Each site occupied by a temporary use shall be left free of debris, litter, or any other evidence of the temporary use upon completion or removal of the use and shall thereafter be used pursuant to the provisions of this Zoning Ordinance.~~
 - ii. ~~Parking. Adequate parking shall be provided and maintained during the course of the activity. Public parking shall not be negatively impacted.~~
 - iii. ~~Depending on the scope of the special event or activity, the special event and activity may require additional permits issued by other departments.~~
 - iv. ~~When a Conditional Use Permit for a Special Event and Activity has been revoked, no other Conditional Use Permit for a Special Event and Activity shall be issued under this Section to the same location within one (1) calendar year of the date of revocation.~~

HG. Temporary Buildings or Structures. Temporary buildings or structures may be permitted, subject to the following provisions:

1. Authorization. Written authorization for the sale shall be obtained from the property owner.
2. Location. The temporary building or structure shall not be visible from adjacent streets or right-of-ways.

3. Review Requirements. Temporary buildings or structures shall require the approval of a Conditional Use Permit, in accordance with Section XI-10-57.04, Conditional Use Permits, of this Chapter.
4. Only temporary buildings and structures serving permitted uses or uses that received a Conditional Use Permit pursuant to the underlying zoning are allowed.
5. Time limits. Temporary use of buildings shall not exceed two (2) years in undeveloped sections of the City, and for periods not to exceed six (6) months in developed sections. Exceptions may be granted if required by County, State or federal agency.

I.H. Temporary Contractor's Office. Temporary contractors' office trailers and construction-related storage trailers in undeveloped and developed sections of the City shall comply with the following:

1. Location. Trailers shall not obstruct driveways or traffic access aisles.
2. Other Standards.
 - a. The applicant shall demonstrate that parking will not be negatively impacted.
 - b. The colors and materials shall complement the main building, if one exists.
 - c. Any exterior noise-generating equipment associated with trailers shall not be within 300 feet of a residential or mobile home park overlay district or use.
 - d. Trailers shall be removed upon cessation of permitted construction activity.

Exceptions. Any deviation from standards 1 and 2 above shall only be allowed through the approval of a Minor Site Development Permit.

J. Conditions. When considering approval of a temporary use or structure, the review authority may impose conditions deemed necessary to ensure that the permit or approval will be in accordance with the standards prescribed in this Section and the findings required for the approval. These conditions may include, but are not limited to:

1. Regulation of operating hours and days;
2. Provision for temporary parking facilities, including vehicular ingress and egress;
3. Regulation of nuisance factors such as, but not limited to, prevention of glare or direct illumination on adjacent properties, noise, vibration, smoke, dust, dirt, odors, gases and heat;
4. Regulation of temporary structures and facilities, including placement, height and size, location of equipment and open spaces, including buffer areas and other yards;
5. Provision for sanitary and medical facilities;
6. Provision for solid, hazardous and toxic waste collection and disposal;
7. Provision for security and safety measures;
8. Regulation of signs;
9. Submission of a performance bond or other surety devices, satisfactory to the review authority, to ensure that any temporary facilities or structures used will be removed from the site within a reasonable time following the event and that the property will be restored to its former condition;
10. Provision for visual screening, not limited to landscaping;
11. Any other conditions which will ensure the operation of the proposed temporary use in an orderly and efficient manner and in accordance with the intent and purpose of this Section.

Title XI, Chapter 10 is amended to add a new Section 15 entitled "Special Events and Activities" to read as follows:

Section 15 - Special Events and Activities

XI-10-15.01 - Purpose and Intent

The purpose and intent of this Section is to provide a regulatory framework for permitting Special Events. Special Events shall be conducted so as not to cause any detrimental effects to surrounding properties and the community, and shall not violate any other ordinance or regulation of the City. The provisions set forth in this

Section shall establish criteria for characterizing events as "Special Events" and standards and conditions for approving and permitting such Special Events.

XI-10-15.02 - Applicability

Unless identified as exempt below, this Section shall apply to Special Events on private property and public streets, sidewalks, alleys, parks, ways, public places, and public rights-of-way as described in Subsections 15.03 through 15.22 of this Section.

XI-10-15.03 - Review Requirement

Special Events shall require review and approval in accordance with Table XI-10-15.03-1, below.

Table XI-10-15.03-1
Review Requirements for Special Events

<u>Threshold for review</u>	<u>Planning Director or Designee</u>	<u>Planning Commission Subcommittee</u>	<u>Hearing Officer</u>
<u>Minor Events</u> <u>Any Special Event with or without amplified sound that does not exceed four consecutive days (including set up and tear down).</u> <u>Block parties on a residential street.¹</u>	<u>X</u>		
<u>Major Events</u> <u>Any Special Event that exceeds four consecutive days (including set up and tear down); up to seven days with or without amplified sound and/or street closures or any event that anticipates crowds exceeding 1,000 people.²</u>	<u>X</u>		
<u>Multiple Reviews</u> <u>Recurring Special Events (up to four events per calendar year): Applicant may request a one-time review and issuance of a Special Event Permit for events which occur up to four times per calendar year for a permissible duration of 4 consecutive days for each recurring event.³</u> <u>Multi-Year Events: Applicant may request a Special Event Permit good for up to three (3) years for Special Events that will be held annually, for up to three (3) consecutive years in the same location. Applicant must demonstrate that the same event</u>	<u>X</u>	<u>X</u>	

<u>location, layout, date and times are adhered to for each event.</u> ³			
<u>Appeals or Revocations</u> <u>Hearing on a notice of decision to deny an application for Special Event Permit or to revoke or appeal a Special Event Permit.</u>⁴			<u>X</u>

¹ See MMC V-100-13.05

² Permits for events exceeding seven (7) days may be granted at the Planning Director's discretion.

³ Planning Director may recommend to Planning Commission Subcommittee for review and approval.

⁴ Appeals to Hearing Officer may only occur after denial or revocation by the Planning Director or designee.

XI-10-15.04 - Definitions

The definitions set forth in this part shall govern the application and interpretation of this Section.

1. "Amplified Sound" means any sound created by the use of sound amplification equipment and/or performance with electric or acoustic instruments associated with a special event.
2. "Athletic Events" means a physical or endurance activity that includes but is not limited to races, runs, walkathons, bicycle tours and the like.
3. "Block Party" means a party for all the residents of a block or neighborhood, typically held on a temporarily closed City street.
4. "Business day" means any day except Saturday, Sunday and holidays observed by the City of Milpitas.
5. "Business License" means a permit issued by the City of Milpitas that allows individuals, companies, or other entities to transact and conduct business within the City limits.
6. "City Official" means an authorized officer of the City of Milpitas as appointed by the City Manager or City Council.
7. "Director" means the Director or head of the department(s) designated to issue Special Event Permits, or such other person or persons designated by the Director to fulfill the responsibilities identified as the Director's responsibilities herein.
8. "Downtown" means the main business or commercial areas within the Midtown and Transit Area Specific Plan districts and the Town Center Zoning District.
9. "First Amendment Event" means conduct, the sole or principal object of which is the expression, dissemination or communication by verbal, visual, literary, or auditory means of opinion, views or ideas. Expressive activity includes, but is not limited to, public oratory and distribution of literature.
10. "Food Truck Event" means an event where a more than three (3) food trucks gather in one location.
11. "Indigent Natural Person" includes, but is not limited to, a person enrolled or participating in a federal or state government assistance program for low-income or indigent persons such as general assistance, CalWORKS, Medi-Cal, food stamps, Supplemental Security Income (SSI), Women, Infants and Children (WIC), U.S. Department of Housing and Urban Development (HUD) Section 8 rental housing subsidy, and other subsidized or public housing.
12. "Indoor/Outdoor Facility Rental Agreement" means a rental agreement issued by the Recreation Services Department to conduct a special event in a park.
13. "Outside Agency" means any local, state or federal regulatory agency responsible for administering permits to allow certain activities within their purview. Outside agencies includes but not limited to other City jurisdictions, Santa Clara Valley Water District (SCVWD), Santa Clara Valley Transportation Authority (VTA), California Department of Transportation (Caltrans), California Department of Alcoholic Beverage Control, Santa Clara County Department of Environmental Health and Santa Clara County Roads and Airports.
14. "Parade" means an organized group marching in procession on a street. Parades do not include races, runs or other athletic events.

15. "Park", for purposes of this Section, means all outdoor areas managed by the Recreation Services Department, which are identified as a City park by the City, made available for use by the public as a park for recreation or open space purposes, and over which the City has the right of use for such purposes. The term "park" does not include outdoor areas adjacent to community centers not otherwise located within a City park, or property owned by school districts even if the property is used by the City for recreational purposes.
16. "Paseo" means a mall designed and used for pedestrian passage between two or more parallel streets and which is owned or controlled by the City. The definition of "paseo" includes any adjacent sidewalks.
17. "Permittee" means a person, company, corporation or entity that is given a permit or permission to hold a Special Event.
18. "Permit Applicant" means a person, company, corporation or entity that applies for a permit.
19. "Plaza" means a public square or similar open area in the downtown which is owned or controlled by the City. The definition of "plaza" includes any adjacent sidewalks.
20. "Public Right-Of-Way" means any street, alley, or similar parcel of land, which is deeded, dedicated, or otherwise permanently appropriated to the public for public use.
21. "Regulations" means the policies, rules and regulations mandated by the City which govern the Special Event Permit and use of City sidewalks, streets, plazas, paseos, and parks.
22. "Simple Assembly" means a gathering of persons at a park, plaza or paseo that does not include any of the following:
 - a) The placement or erection of equipment or temporary structures other than one portable table and two chairs; or
 - b) Activities referenced in Section XI-10-15.04 (19) (c) of this Code.
 - c) For purposes of illustration, a simple assembly can be a large gathering of one hundred fifty (150) persons; no equipment or structures (other than a table and two chairs) are placed or erected; and the other activities (i.e., cooking, sale or public distribution of food and commercial merchandise) are not involved. Nothing herein prevents the use of handheld equipment, including a loudspeaker, and handheld signs at a simple assembly.
23. "Special Event" means an outdoor event that consists of any of the following:
 - a) A parade or assembly consisting of persons, animals, vehicles, or any combination thereof, which is to intended to assemble or travel in unison on any street and which does not comply with applicable traffic regulations, laws, or controls;
 - b) An organized assemblage of one hundred fifty (150) or more persons at a plaza or park, or seventy-five (75) or more persons on a paseo, or any assemblage that exceeds the maximum capacity of the plaza, park or paseo facility gathered for a common purpose under the direction or control of a person or organization; or
 - c) An activity or event on a public right-of-way, plaza, paseo, park or private property which involves:
 - i. The placement or erection of equipment or temporary structures other than one portable table and two chairs, including but not limited to a booth, tent, canopy, stage, barricade, fencing, generator, heating equipment, sound amplifier, vehicle or float;
 - ii. The use of live animals, fireworks, pyrotechnics, electrical power and/or cabling, or equipment or materials that can create a risk of damage to public or private property or injury to persons;
 - iii. Cooking or the sale, preparation for sale or commercial distribution of food or beverages;
 - iv. The sale of commercial merchandise.
 - d) An activity which involves blocking off a street or other use of a street which obstructs the normal traffic thereon.

- e) Examples of Special Events include, but are not limited to, concerts, parades, carnivals, fairs, festivals, block parties, public dances, street fairs, community events, sporting or athletic events, parties, meals, food truck gatherings, celebrations and receptions.
 - f) For definitions of “Major” or “Minor” Special Events, see Table XI-10-15.03-1: Review Requirements for Special Events.
- 24. “Special Event Permit” means a permit issued pursuant to this Section, which authorizes the holder to conduct a Special Event at a Special Event Venue in accordance with its terms and conditions. A Special Event Permit includes a Temporary Street Closure Permit, Temporary Assembly Permit, Business License, and any outside agency regulatory permits that may be required for the operations and activities for the aforementioned Special Event.
 - 25. “Special Event Venue” means the outdoor area (i.e., private property, street, park, paseo, or plaza) for which a Special Event Permit has been issued.
 - 26. “Street” means a public or private right of way used for vehicular traffic that is owned, controlled or maintained by the City. The definition of “street” includes the entire street right-of-way inclusive of any and all adjacent sidewalks.
 - 27. “Temporary Street Closure Permit” means a permit issued by the Chief of Police of the Milpitas Police Department or designee to conduct a special event on a public street.
 - 28. “Temporary Assembly Permit” means a permit that is issued by the City of Milpitas Fire Marshal for the temporary assembly of fifty (50) or more people associated with a Special Event.
 - 29. “Temporary Collection Service Agreement” means an agreement between the Permittee and City’s public service provider for the trash and recycling collection.
 - 30. “Written Request” means written, typed or email correspondence submitted by the applicant to the Director or Designee. Text messages are not included.

XI-10-15.05 - Permit Required

No person, company, corporation or entity shall conduct or cause to be conducted, participate or engage in, hold, manage, permit, or allow another to conduct a Special Event in, on or upon any street, paseo, plaza or park unless authorized to do so as follows:

- A. By this Section or otherwise by this Code;
- B. Pursuant to the terms of a permit, lease or contract which has been entered into by the City in accordance with the provisions of this Code or as specifically authorized by the City Council; or
- C. In accordance with a Special Event Permit.

XI-10-15.06 - Exceptions to Permit Requirement

Notwithstanding any other provision of this Chapter, the following activities are exempt from the Special Event Permit requirement:

- A. Activities on a street conducted by a governmental agency acting within the scope of its authorized functions;
- B. A simple assembly on an area of a plaza or park that is open to the public and which has not been reserved for use, provided that the assembly meets the definition of “Simple Assembly” herein and remains in compliance with all regulations applicable to the plaza or park, including but not limited to the capacity limits of the applicable area of the plaza or park.
- C. Park rental for the purpose of private party not open to the general public.

- D. Private small gatherings and parties typically held at home that do not involve amplified sound and are not incompatible with the generally intended use of the property and have no impact on the neighborhood or community.
- E. First Amendment events planned in response to a contemporaneous public event or decision which could not have been known in advance. However, the person conducting, organizing or sponsoring the First Amendment event shall, if practicable, provide notice to the Milpitas Police Department no later than forty-eight (48) hours prior to the commencement of the First Amendment event if there is any possibility that the event will interfere with the flow of traffic.

XI-10-15.07 - Issuance of Special Event Permits

- A. The Director or designee is authorized to issue Special Event Permits consistent with Table XI-10-15.03-1. (Review Requirements for Special Events)
- B. Special Event Permits are issued on a first-come, first-served basis to applicants who comply with the permit application procedure and requirements set forth in XI-10-15.13 (Permit Application Filing Time) and the regulations issued under this Section.
- C. The Director or designee may condition any permit issued pursuant to this Section with reasonable requirements concerning the time, place or manner of holding the Special Event as is necessary to coordinate multiple uses of public property, assure preservation of public property and public spaces; prevent dangerous, unlawful or prohibited uses, protect the safety of persons and property and to control vehicular and pedestrian traffic in and around the venue, provided that such requirements shall not be imposed in a manner that will unreasonably restrict expressive or other activity protected by the California or United States Constitutions. Conditions may include, but are not limited to, the following:
 - 1. The establishment of an assembly or disbanding area for a parade or like event;
 - 2. The accommodation of a Special Event's pedestrian and vehicular traffic, including restricting events to City sidewalks, portions of a street, or other public right-of-way;
 - 3. Conditions designed to avoid or lessen interference with public safety functions and/or emergency access;
 - 4. The number and type of vehicles, animals, or structures to be displayed or used in the conduct of the Special Event;
 - 5. The written representation of the Special Event applicant that any stages, booths, floats, structures, vehicles or equipment to be used or operated during the Special Event are safely constructed and can be safely operated, and conform to the requirements of all applicable codes;
 - 6. A cleaning and repair deposit if the event includes the placement of a booth, tent, canopy, stage, barricade, fencing, generator, heating equipment, float, vehicle, portable restrooms, dumpsters, carnival rides, or any structure or equipment on the public right-of-way or within a public paseo, plaza, or park that requires a permit or approval from the City;
 - 7. Display or use of animals;
 - 8. Operation of water stations;
 - 9. Application of materials on City property;
 - 10. Use of fireworks, pyrotechnics, or equipment or materials that create substantial risk of damage to City property;
 - 11. Sporting events on non-athletic fields;
 - 12. Cooking, preparation for sale, or sale of food or beverage;
 - 13. The provision and use of traffic cones or barricades or traffic control personnel;

14. The provision or operation of first aid stations or sanitary facilities, including sanitary facilities with disabled access;
15. The provision of a waste and recycling management plan, and the clean-up and restoration of the site of the Special Event;
16. The use of sound amplification equipment, and restrictions on the amount of noise generated by motors and other equipment used in the course of the Special Event;
17. The manner of providing notice of permit conditions to Special Event vendors or participants and community notice of the Special Event to those businesses or residents who may be directly affected by the conduct of the event;
18. The provision or use of emergency services;
19. The reasonable designation of alternate sites, times, or dates;
20. The obtaining of any and all business licenses or other necessary permits required by local and State governmental agencies for the sale or distribution of food, beverage or other goods or services at the Special Event;
21. The manner by which alcohol sales and service, if any, shall be conducted at the Special Event;
22. The precautions necessary for the protection of wildlife, native plants and sensitive habitats, streams, lakes and waterways within or adjacent to the Special Event.

XI-10-15.08 - Rules and Regulations

- A. The Director is authorized to promulgate rules and regulations consistent with this Section, and to place reasonable time, place and manner conditions, consistent with this Section, on Special Event Permits, including without limitation, limits on the number of permits issued per month, the duration of a permit or event, and the times the Special Event Venue is available for event reservation as reasonably necessary to avoid adverse impacts on the community. Nothing herein limits the authority of the Director of Public Works, City Traffic Engineer, Fire Marshal, Chief of Police and/or Recreation Services Manager, to issue regulations applicable to parks, public right-of-ways, and/or private property.
- B. It shall be unlawful to disobey or fail to follow regulations adopted pursuant to this Section, or any other rule, regulation, or lawful direction promulgated or made by the Director, of which such person has actual notice, however given, or as to which constructive notice has been given by appropriate sign or notice at the Special Event Venue.

XI-10-15.09 - Fees and Charges

- A. An applicant for a Special Event Permit shall pay all fees, deposits and applicable City charges in the amounts and at the prescribed time, as set forth by resolution of the City Council.
- B. Applications which do not adhere to the application filing time requirements in Section XI-10-15.13 (Permit Application Filing Time) may be subject to additional fees arising as a direct result of the late application. Upon conclusion of the Special Event, the City shall send an invoice to the Permittee for all fees and charges still due to the City, for the cost of services provided by the City departments and for the cost to the City of any cleaning and/or repairs to the Special Event Venue made necessary by the Permittee's use. Permittee shall be responsible for the actual costs of cleaning and repairs made necessary by the Permittee's use of the Special Event Venue.
- C. Any person who conducts, organizes, sponsors or produces a Special Event without obtaining a permit in violation of this Section shall be responsible for the actual costs of cleaning and repairs to the Special Event Venue and City departmental service charges incurred in connection with or due to the unpermitted Special Event.

D. Any indigent natural person who intends to engage in a First Amendment event who cannot afford to pay a permit fee shall not be required to pay the fee. Application for indigent status shall be made at the time of permit application and shall be accompanied by such relevant information and documentation as the Director determines is reasonably necessary to verify such status. Nothing herein shall exempt an indigent natural person from the requirement to apply for and obtain a permit under this Section.

XI-10-15.10 - Indemnification and Hold Harmless

A. Except as set forth in Subsection B below, each Permittee to whom a Special Event Permit has been granted must agree in writing to indemnify and hold the City, its officers, agents and employees, harmless from and against any and all liability and losses incurred from the conduct of Permittee or its officers, employees, and agents.

B. The requirement set forth in this Subsection shall not apply to:

1. -Special events that are First Amendment events, unless Permittee has elected to provide indemnification to the City in accordance with Subsection A above in lieu of providing the insurance required in Section XI-10.11 (Insurance Requirement) below; and
2. Activities referenced in Section XI-10-15.06 (Exceptions to Permit Requirement) of this Code.

XI-10-15.11 - Insurance Requirements

A. As a condition of the Special Event Permit, the Permittee shall provide the Director with proof of insurance no later than eight (8) business days prior to the Special Event, which insurance shall remain in full force and effect throughout the term of the Special Event Permit. The following are excepted from the requirements of this Subsection:

1. Any Special Event where the requirement for insurance is prohibited by law;
2. Any Special Event where exemption is obtained as provided in Subsection XI-10-15.06;
3. First Amendment events that do not present any objective, substantial risk, hazard, and/or danger to the public health and safety, as identified by the City Manager, who shall consider the reasonably foreseeable consequences of the event. Applicants seeking approval of First Amendment events which, due to their design or schedule, do present an objective, substantial risk, hazard, or danger to the public health or safety, must either comply with the insurance requirements of this Section XI-10-15.11 or enter into a hold harmless agreement as set forth in Section XI-10-15.10 above; or
4. Special Events permitted under this Section that do not involve:
 - a) The placement or erection of stages, barricades, fencing, booths, tents, canopies, floats, vehicles, generators, heating equipment, portable restrooms, dumpsters, carnival rides, or any structure or equipment requiring a permit or approval from the Building and Fire Department; and
 - b) The other activities referenced in Section XI-10-15.06 (Exceptions to Permit Requirement) of this Code.

B. Notwithstanding the timeframe set forth in Section XI-10-15.13 (Permit Application Filing Time), if an application for a Special Event Permit is submitted to the City less than fourteen (14) days prior to the Special Event under this Section, the Permittee shall provide the Director with proof of insurance as prescribed in the regulations no later than eight (8) calendar days prior to the Special Event.

XI-10-15.12 - Permit Application

A. An applicant for a Special Event Permit shall file an application on a form provided by the Director, which shall contain all of the following information:

1. The name, address, email, and telephone number of the applicant.
2. A narrative description of the proposed Special Event, including:
 - a) The name of the proposed Special Event;
 - b) Expected attendance numbers;
 - c) A description of any proposed food, beverage or alcohol service;
 - d) The schedule of events to be included in the activity;
 - e) A solid waste handling plan;
 - f) A security plan and/or public safety plan when required by the regulations;
 - g) A traffic handling and parking plan;
 - h) A pedestrian circulation plan;
 - i) A temporary event signage plan.
3. The address of the proposed Special Event Venue and the specific area or areas therein which will be utilized in connection with the Special Event;
4. A detailed drawing depicting the layout of the proposed activity, including the number and location of any booths, cooking equipment, tables, canopies, stages, fencing, waste receptacles, signage, generators, and any other event equipment proposed to be placed at the Special Event Venue;
5. The date(s) and the specific times requested for use of the Special Event Venue;
6. The approximate number of vendors, if any;
7. For parades:
 - a) The parade route to be followed;
 - b) Start and termination points;
 - c) The location of assembly and disbanding areas; and
 - d) The maximum length of the parade components in miles or fractions thereof.
8. A certification that the applicant shall be financially responsible for any City fees, departmental service charges or costs that may lawfully be imposed for the Special Event;
9. The name, address, e-mail address and telephone number of the person to be contacted regarding the application or permit and, if different, the person to be contacted on the date or dates of the Special Event; and
10. The types of City services, if any, which are requested by the applicant.
11. Outside Agency and/or third party approvals.

B. An application shall not be complete until the applicant submits the permit fee as prescribed by the schedule of fees schedule established by City Council Resolution.

XI-10-15.13 - Permit Application Filing Time

- A. A completed application for a Minor and Major Special Event shall be filed not less than seventy (70) business days before the proposed date of the Special Event.
- B. For an event that requires a street closure on more than one public street, requires significant detouring which affects significant number or businesses or residences, or requires an encroachment permit from Caltrans, a Special Event Permit shall be filed not less than one hundred eighty (180) business days before the proposed date of the Special Event.

- C. For First Amendment events not otherwise exempted from the Special Event permit requirement by Section XI-10-15.06 above, as well processions or parades that do not involve street closures, vehicles, floats, or use of equipment other than hand-held equipment, an application for a Special Event Permit shall be filed not less than fourteen (14) business days before the proposed date of the Special Event.
- D. Permit applications which do not adhere to the application filing time requirements in this Section may be subject to additional fees arising as a direct result of the late submission of a Special Event Permit application. The Director shall have the authority to consider, grant or deny any application for a Special Event Permit which is filed later than the time prescribed in this Section.

XI-10-15.14 - Timeframe for Permit Decision and Permit Approval Criteria

- A. The Director or designee shall approve, conditionally approve, or deny the application for a Special Event no later than twenty (20) business days after of the receipt of a complete application for a Special Event.
- B. The Director or designee shall approve or conditionally approve a Special Event Permit application under this Section if the Director finds that the following criteria have been met:
 - 1. The proposed use of the property is not governed by or subject to any other permit procedures provided elsewhere in this Code or other applicable laws, rules or regulations which have not been completed at the time the Special Event Permit application is submitted;
 - 2. With sufficient traffic controls and conditions, the Special Event will not create a threat to public safety;
 - 3. In order to protect the health and safety of the public, the Special Event will not conflict with construction in the public right-of-way or at a public facility;
 - 4. The Special Event will not require the diversion of public safety or other City employees from their normal duties so as to unreasonably reduce adequate levels of service to any other portion of the City;
 - 5. The concentration of persons, animals or vehicles will not unreasonably interfere with the movement of police, fire, ambulance, and other public safety or emergency vehicles on the streets;
 - 6. The Special Event will not unreasonably interfere with any other Special Event for which a permit has already been granted or with the provision of City services in support of other scheduled events or scheduled government functions;
 - 7. The proposed use, event or activity will not have a significant adverse environmental impact;
 - 8. The proposed use, event or activity does not present a substantial or unwarranted safety, noise or traffic hazard;
 - 9. The proposed Special Event will be consistent with the regulations established for each potential venue with regard to:
 - a) Size;
 - b) Type of activity;
 - c) Available time period; and
 - d) Frequency of events.
 - 10. For parades, the parade is scheduled to move from its point of origin to its point of termination expeditiously and without unreasonable delays en-route in order to limit the impacts on the flow of traffic through the City; and
 - 11. The proposed Special Event does not meet the grounds for denial or revocation specified in Section XI-10-15.15 (Permit Denial or Revocation).
- C. In determining whether to approve a permit application, no consideration may be given to the message of the event, the content of the speech, the identity or associational relationships of the applicant or its members or

affiliates, or to any assumptions or predictions as to the amount of support or hostility which may be aroused in the public by the content of the speech or the message conveyed during the event.

- D. The Director may condition any permit with reasonable requirements, as outlined in Section XI-10-15.07 (Issuance of Event Permits), and applicants may be required to pay permit fees and deposits, as outlined in XI-10-15.09 (Fees and Charges).
- E. The Special Event Permit shall not be issued until the applicant has paid all required fees and deposits.

XI-10-15.15 - Permit Denial or Revocation

- A. The Director or designee shall deny an application for a Special Event Permit or revoke a Special Event Permit if the Director finds any of the following:
 - 1. Fraud, misrepresentation or any false statement contained in the application for a Special Event Permit, including without limitation, in carrying out the Special Event in a way not consistent with the application;
 - 2. Failure to comply with the provisions of this Section or the regulations;
 - 3. Failure to comply with the conditions of the Special Event Permit, including without limitation, failure to timely pay applicable fees and City charges, provide indemnification or insurance certificate or security deposit within the times required, or failure to comply with all other permit requirements, licensing requirements, or regulations required to conduct the activities described as part of the Special Event in the permit application or any amendment thereto;
 - 4. The Special Event Venue or any substantial portion thereof is not available due to fire, casualty, act of God, emergency maintenance activity or public emergency;
 - 5. The proposed event will conflict with a previously scheduled event organized by the City for use of the Special Event Venue, or with a Special Event or other permitted use previously approved to be held at the Special Event Venue;
 - 6. The proposed event, as designed, will unreasonably impede, obstruct, impair or interfere with reasonable access to adjacent properties and the applicant will not agree to redesign the proposed event so as to allow reasonable access to the adjacent properties;
 - 7. The Special Event Venue, including but not limited to the proposed areas for assembly or disbanding of parades, cannot physically accommodate the number of participants expected to participate and/or the items necessary or proposed to support the event;
 - 8. The proposed activity or event will violate a federal, State or local law or regulation;
 - 9. One or more of the approval criteria specified in Section XI-10-15.14 (Timeframe for Permit Decision and Permit Approval Criteria) is not met;
 - 10. The requirements specified in Section XI-10.15.13 (Permit Application Filing Time) are not met.

XI-10-15.16 - Final Permit Approval

- A. If the Director or designee has issued a Conditional Special Event Permit, the Permittee shall submit the final event plans and demonstrate all permit conditions have been satisfied at least ten (10) business days prior to the event. If the Permittee does not submit verification that the permit conditions have been met within the applicable deadline specified in this Subsection, the Special Event Permit will be deemed revoked.
- B. Upon receipt of the final event plans and verification that permit conditions have been met consistent with Section XI-10-15.14 (Timeframe for Permit Decision and Permit Approval Criteria) above, the Director or designee shall issue written confirmation that such conditions have been met in the form of a final Special Event Permit or other written confirmation. The final Special Event Permit or confirmation shall be issued no

later than five (5) business days after receipt of the final event plans and verification of compliance with permit conditions or two (2) business days prior to the first day of the Special Event, whichever occurs earlier.

- C. At the discretion of the Director or designee an extension of the deadline for submission of final event plans or verification of permit conditions may be granted.

XI-10-15.17 - Notice of Decision

- A. The Director or designee shall notify an applicant or Permittee in writing of the decision to approve, conditionally approve, or deny the application for a Special Event Permit or to revoke a Special Event Permit, in the event that the revocation is prior to the date of the proposed activity.
- B. The notice of decision shall state any conditions required, the reasons for the conditions, or the grounds for denial of the application or revocation of the Special Event Permit. The notice shall notify the applicant or Permittee of the hearing opportunity pursuant to Section XI-10-15.18 (Hearing).
- C. Notification shall be deemed satisfied and issued when the notice is placed, postage prepaid, in the United States mail, and addressed to the applicant at the address shown on the permit application.
- D. Except as set forth in Subsection F, a written request for a hearing must be received no later than ten (10) calendar days after the date of the notice of decision.
- E. If the notice of decision to deny, revoke or impose conditions on a Special Event Permit is issued five (5) or fewer business days prior to the proposed event, the notice of decision shall notify the applicant or Permittee of the time, date and location of the hearing.
- F. Notwithstanding any other provision of this Subsection XI-10-15.17, if a notice of decision to deny or revoke a Special Event Permit issued for a First Amendment event less than thirty (30) calendar days from the date of the proposed event, any appeal from said decision shall proceed immediately to a court of competent jurisdiction. The notice of decision shall become final unless a written request for hearing is received within the time limits set forth in this Subsection.

XI-10-15.18 - Hearing

- A. Upon receipt of a timely written request for a hearing as outlined in Section XI-10-15.17 (Notice of Decision), the Director shall schedule a hearing before a hearing officer and shall promptly notify the applicant or Permittee of the hearing date, time and location.
- B. At the hearing, the applicant or Permittee may present any relevant evidence. The appeal will be conducted informally; no formal rules of evidence shall apply. The applicant or Permittee may be represented by any person.
- C. After closing the hearing, the hearing officer shall give a decision sustaining, reversing or modifying the decision to deny or revoke the Special Event Permit or specific permit conditions. A written notice of final decision shall be placed, postage prepaid, in the United States mail, addressed to the Permittee or applicant at the address shown on the permit application.
- D. The decision of the hearing officer shall be final.

XI-10-15.19 - Display of Permit

A copy of the Special Event Permit shall be exhibited upon demand of any City Official.

XI-10-15.20 - Permit Amendment

- A. If a Permittee desires to change the location, time, or duration or other significant aspect of the description of an event subject to a Special Event Permit, the Permittee shall apply for an amendment to the Special Event Permit.
- B. A Special Event Permit amendment application must be filed with the Director no later than fifteen (15) business days in advance of the Special Event.

- C. The Director shall grant, deny, or approve with modifications, the Special Event Permit amendment no later than seven (7) business days of receipt of the amendment application.
- D. The provisions set forth in Section XI-10-15.17 (Notice of Decision), Section XI-10-15.18 (Hearing) and Section XI-10-15.19 (Display of Permit) shall apply to all applications for Special Event permit amendments.

XI-10-15.21 - Immediate Revocation - Conditions

Any Special Event Permit may be revoked on the day of the Special Event without prior written notice and without a hearing, if the City Council, the City Manager, the Director, the Fire Marshal or the Chief of Police, or their authorized designees, determines that:

1. Revocation is in the interest of the immediate public health or safety because of fire, casualty, act of God or a public emergency; or
2. The Permittee is in violation of the provisions of this Section, the regulations, or the terms of the Special Event Permit.

The grounds for revocation shall be communicated at the time notice is provided. The Permittee, immediately upon receipt of the notification that the Special Event Permit has been revoked, shall cease the activity and shall commence with restoring the Special Event Venue to its condition prior to the activity.

XI-10-15.22 - Interference with Event

- A. It shall be unlawful for a person to place any booth, table, chair, stool, structure, vehicle, or piece of equipment in any area for which a Special Event Permit has been issued, without the consent of the Permittee.
- B. This Subsection shall not apply to persons acting under the direction and control of the City.

Section XI-10-24 entitled “Signs” of the Milpitas Municipal Code is amended as follows:

XI-10-24.04 – Signs Subject to Review

F. Standards for Specific Types of Temporary Signs.

1. Balloon Sign. A balloon sign shall be allowed pursuant to the provisions of a temporary promotional sign for the following:
 - a. Community-wide events (an event that either promotes and/or benefits the entire City and has been approved through the Special Events and Activities process in Section ~~XI-10-13.11(G)~~ 15, of this Chapter (such as Art and Wine Festival, Harvest Festival and the like) or when the City has authorized a public street closure for an event).”

Table XI-10.57.04-1 of the Milpitas Municipal Code is amended to read as follows:

Table XI-10-57.04-1

Use/Modifications	As provided for in:	Notes
Height		
Height. For buildings that exceed three (3) stories or thirty-five (35) feet within the MP and TC districts.	Table XI-10-7.03-1, Industrial Zone Development Standards and Table XI-10-5.03-1 Commercial Zone Development Standards	

Height. For buildings that exceed six (6) stories or eight-five (85) feet within the -OO overlay district up to a maximum of eight (8) stories or one hundred fifteen (115) feet in height.	Section XI-10-12.02, Gateway Office (-OO) Overlay District	
Height. Permit in R2 and R3 districts, schools, hospitals, sanitariums, institutions, churches and other similar uses allowed under the use regulations of this Chapter, to be erected to a height not exceeding six (6) stories or seventy-five (75) feet, provided, that the front and side yard requirements for such buildings in the "R3" District are complied with.		
Non-conforming		
Nonconforming buildings and structures	Section XI-10-56.02(C), Additions to,—enlargements and—Moving of nonconforming buildings and structures	See footnote 1
Nonconforming uses, change of use	Section XI-10-56.03, Nonconforming use of buildings and structures	
Parking		
Parking location	Section XI-10-53.13(A), Location of Parking	
Tandem parking	Section XI-10-53.07(D), Tandem Parking Spaces and Section XI-10-53.13(B), Parking Space Size	
Parking Structures	Section XI-10-53(H)(4), Parking Structures	
Temporary Uses and Structures		
Special event and activity	Section XI-10-13.11(I), Special events and activities	
Temporary buildings and structures	Section XI-10-13.11(H), Temporary Uses and Structures.	
Other		
Certain industrial uses within commercial districts	Table XI-10-5.02-1, Commercial Zone Uses.	
Exceptions to performance standards	See the zoning districts use standards in XI-10-05, Residential Zones, XI-10-06, Mixed Use Zones, and XI-10-07, Industrial Zones.	
Lot width reduction		
Wireless telecommunications facilities	Section XI-10-13.09, Wireless Telecommunications Facilities, of this	

	Chapter, for specific standards and exempted facilities.	
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- ¹ In addition, the cumulative floor area included in all such additions or enlargements since the adoption of Ord. No. 38.760 (September 17, 2002) shall not exceed thirty (30%) percent of the floor area contained in said building or structure. Floor area, for the purposes of this Subsection, shall include all habitable space associated with a residential use and shall mean gross floor area associated with any non-residential use. These criteria are established so as not to prolong the life of the original building or structure.

Table XI-10-64.02-1 entitled “Decision-Making Body and Role¹” of the Milpitas Municipal Code is amended to read as follows:

Table XI-10-64.02-1
Decision-Making Body and Role¹

Type of Permit or Decision	Procedures are found in:	Planning Division	Planning Commission Subcommittee	<u>Hearing Officer</u>	Planning Commission	City Council
	Land Use Permits and other Development Entitlements					
Staff Review ²		Issuance			Appeal	Appeal
Conditional Use Permits	XI-10-57.04				Decision	Appeal
Development Agreements					Recommend	Decision
Minor Conditional Use Permits (Planning Commission Subcommittee)	XI-10-57.04		Decision		Appeal	Appeal
Minor Conditional Use Permits (Staff Review)	XI-10-57.04	Decision			Appeal	Appeal
Minor Site Development Permits (Planning Commission Subcommittee)	XI-10-57.03		Decision		Appeal	Appeal
Minor Site Development Permits (Staff Review)	XI-10-57.03	Decision			Appeal	Appeal
Mobile Home Park Conversion Permit	Title XI, Chapter 20				Recommend	Decision

Planned Unit Development	XI-10-54.07				Recommend	Decision
Site Development Permits	XI-10-57.03				Decision Recommend ³	Appeal Decision ³
<u>Special Event Permits</u>	<u>XI-15.03</u>	<u>Decision</u>		<u>Appeal</u>		
Variances	XI-10-57.06				Decision	Appeal
Zoning Ordinance Administration and Amendments						
General Plan Amendments	XI-10-57.02				Recommend	Decision
Specific Plan Amendments	XI-10-57.02				Recommend	Decision
Zoning Amendments	XI-10-57.02				Recommend	Decision

¹ "Recommend" means that the decision-making body makes a recommendation to a higher decision-making body; "issuance" means that the permit is a ministerial action that is issued by the decision-making body; "decision" means that the decision-making body makes the final decision on the matter; "appeal" means that the decision-making body may consider and decide upon appeals to the decision of an earlier decision-making body. Any decision by the Planning Commission may be appealed to the City Council as specified in Section XI-10-64.05, Appeals and Title I, Chapter 20, of the City's Municipal Code.

² Includes Home Occupation Permits (Section XI-10-13.05), Minor Site Development Permits (Section XI-10-57.03) reviews requiring building permits and other reviews by Planning Division staff not requiring a building permit or review by other decision-making bodies. Any appeal shall first be to the Planning Commission. The Planning Commission's decision, in turn, may be appealed to the City Council, whose decision shall be final.

³ Refer to Section XI-10-45.09 regarding the process for projects within the "H" Hillside Overlay District.

SECTION 4. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 5. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.



MILPITAS PLANNING COMMISSION AGENDA REPORT

October 14, 2015

APPLICATION: **ZONING TEXT AMENDMENT – ZA15-0004** –A request for a Zoning Text Amendment to amend existing provisions and adopt new provisions in the Zoning Code to establish review requirements and general regulations for special events and activities.

RECOMMENDATION: **Staff recommends that the Planning Commission:**
Conduct the public hearing and adopt Resolution No. 15-017 recommending the City Council adopt Zoning Amendment No. ZA15-0004 to amend the Zoning Code to add new provisions relating to special events and activities.

LOCATION:

Address/APN: Citywide

PEOPLE:

Project Applicant: City of Milpitas
 Consultant: NA
 Property/Business Owners: NA
 Project Planner: Cindy Hom, Assistant Planner

LAND USE:

General Plan Designation: All
 Zoning District: All
 Overlay District: NA

ENVIRONMENTAL: This project is categorically exempt from further CEQA review pursuant to Section 15061(b)(3) (Review for Exemptions), Section 15060(c)(2) (Preliminary Review), Section 15183 (Projects Consistent with a General Plan, Community Plan or Zoning) of the CEQA Guidelines.

BACKGROUND

At the June 10, 2015, Planning Commission meeting, staff brought forward a proposed Zoning Text Amendment intended to create clear and concise zoning code provisions for Special Events. If approved, this amendment would amend existing provisions and add new provisions to the Zoning Code to clarify the requirements for special event applications, formalize the review process and establish general regulations related special events and activities.

The Planning Commission continued the item from the June 10th meeting, in order for staff to provide information on current costs related to Special Events.

Current Costs of Special Event Permit

Special Event Permit Applications to the City of Milpitas currently require a minimum initial deposit of \$250. This deposit is intended to recover costs related to application review and project administration. The City Council can reduce or waive fees up to a maximum amount of \$1500 at their discretion, if asked by applicants.

After an event has occurred, applicants are also invoiced for staff time related to inspections required by various City departments. Invoiced amounts vary based on the size and duration of the event, ranging from several hundred to several thousand dollars.

PROJECT ANALYSIS

Proposed Amendments

The proposed Zoning Ordinance amendment would (i) delete the definition of “Special Events” from Section 2 “Definitions”; (ii) amend Section 13 “Special Uses” to delete the existing special event provisions; (iii) add a new Section 15 entitled “Special Events and Activities; (iv) amend Section 24 “Signs” to delete reference to Section 13 “Special Uses” and add a new reference to the new Section 15 “Special Events and Activities,” (v) delete the reference to “Special Events and Activities” in Table 57.04-1 “Applications”; and (vi) add a new reference to “Special Event Permits” to Table 64.02-1 “Development Review Process.” The proposed changes are indicated in the draft resolution as part of the Planning Commission packet.

FINDINGS

Pursuant to Section 57 of the Zoning Code, the Planning Commission is required to make specific Findings before recommending approval of a Zoning Amendment. Findings must identify the rationale behind the decision to take a certain action. Each code-required Finding is analyzed below.

Zoning Text Amendment (Section XI-10-57.02.G.3)

1. The proposed amendment is consistent with the General Plan.

The proposed Ordinance is consistent with and implements the City of Milpitas’ General Plan. The Ordinance promotes and encourages events for the greater good and cultural diversity of the City and establishes a structured process for permitting special events and activities that insures the City, residents and visitors have adequate notice of proposed events and activities and that the events and activities are properly planned and coordinated.

The project is also consistent with the following General Plan Land Use Element Guiding Principles and Policies:

- Implementing Policy No. 2.a-I-7 Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.
- Implementing Policy No. 2.d-G-2 - Develop adequate civic, recreational, and cultural centers in locations for the best service to the community and in ways which will protect and promote community beauty and growth.

2. *The proposed amendment will not adversely affect the public health, safety and welfare of the residents of Milpitas.*

The proposed zoning amendment will include provisions to ensure public health, safety, and the general welfare standards are met for special events and activities. The zoning provisions will provide requirements, establish permit application filing procedures, and provisions for permit approvals and denials.

ENVIRONMENTAL REVIEW

The California Environmental Quality Act (Section 21000, et. seq. of the California Public Resources Code, hereafter CEQA) requires analysis of agency approvals of discretionary “projects.” A “project,” under CEQA, is defined as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”

Prior to adopting this Ordinance, the Planning Commission independently finds and determines that this action is exempt from CEQA (California Environmental Quality Act) pursuant to CEQA Guidelines sections 15060(c)(2) (Preliminary Review), 15061(b)(3) (Review for Exemptions), and 15183 (Projects consistent with a Community Plan, General Plan, or Zoning), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

PUBLIC COMMENT/OUTREACH

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no inquiries from the public. The table below provides a summary of the City’s public noticing efforts for this project.

Public Noticing Summary

Notice of Public Hearing	Agenda
▪ Public hearing notice posted in the Milpitas Post (<i>14 days prior to the hearing</i>) ▪ Posted on the City's official notice bulletin board (<i>10 days prior to the hearing</i>)	▪ Posted on the City's official notice bulletin board (<i>5 days prior to the hearing</i>) ▪ Posted on the City of Milpitas’s Web site (<i>one week prior to the hearing</i>)

CITY COUNCIL REVIEW

This item is scheduled as a public hearing by the City Council on November 3, 2015.

CONCLUSION

The proposed changes are intended to create clear and concise zoning code provisions for special events and activities that ensures all special events are conducted in a safe and orderly fashion to benefit all those who live in and visit the City of Milpitas.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission:

1. Open the public hearing to receive comments;
2. Close public hearing;
3. Adopt Resolution No. 15-017 recommending the City Council adopt Zoning Amendment No. ZA15-0004 to adopt a new Special Event Ordinance, based on the above findings.

ATTACHMENTS

- A. Resolution No.15-017
 - a. Exhibit A: Draft Ordinance

MEETING MINUTES

MILPITAS PLANNING COMMISSION
Milpitas City Hall, Council Chambers
455 E. Calaveras Blvd., Milpitas, CA

Wednesday, October 14, 2015

- | | |
|--|--|
| I. PLEDGE OF ALLEGIANCE | Vice Chair Madnawat called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance. |
| II. ROLL CALL/ SEATING OF ALTERNATE | <p>Commissioners</p> <p>Present: Vice Chair Rajeev Madnawat, Commissioners Gurdev Sandhu, Larry Ciardella, Demetress Morris, Hon Lien, Ray Maglalang, Zeya Mohsin</p> <p>Absent: Sudhir Mandal</p> <p>Staff: Bill Ekern, Katy Wisinski, Tracy Tam, Cindy Hom</p> |
| III. PUBLIC FORUM | Vice Chair Madnawat invited members of the audience to address the Commission and there were no speakers. |
| IV. APPROVAL OF MEETING MINUTES | <p>Vice Chair Madnawat called for approval of the September 23, 2015 meeting minutes of the Planning Commission.</p> <p>Motion to approve Planning Commission meeting minutes.</p> <p>Motion/Second: Commissioner Maglalang/Commissioner Lien</p> <p>AYES: 5</p> <p>NOES: 0</p> <p>ABSTAIN: 2 Sandhu, Morris</p> |
| V. ANNOUNCEMENTS | Vice Chair Madnawat introduced the new attorney for the Planning Commission, Katy Wisinski of the law firm Best Best & Krieger. |
| VI. CONFLICT OF INTEREST | <p>Attorney Katy Wisinski asked if any member of the Commission had any personal or financial conflict of interest related to any of the items on the agenda.</p> <p>There were no reported conflicts.</p> |

**VII. APPROVAL OF
AGENDA**

Vice Chair Madnawat asked if staff or Commissioners had changes to the agenda and there were none.

Motion to approve the October 14, 2015 agenda as submitted.

Motion/Second: Commissioner Sandhu/Commissioner Maglalang

AYES: 7

NOES: 0

**VIII. CONSENT
CALENDAR**

NO ITEMS

IX. PUBLIC HEARING

IX-1 DAY STAR MONTESSORI CUP AMENDMENT - 215 Dempsey Road - UA14-0006: A request for a Conditional Use Permit Amendment to allow for the expansion of an existing preschool facility for a maximum of 150 students in an existing commercial building.

Project Planner Tracy Tam showed a presentation reviewing the amendment request.

Commissioner Ciardella asked if the number of restrooms is sufficient for the addition of 60 children and Ms. Tam said she is not aware of the requirements and that it will be addressed at the building permit stage of the project.

Commissioner Maglalang asked if the proposed parking spaces include the spaces on the street and Ms. Tam said that on-street parking was not included in the parking analysis.

Commissioner Morris asked the applicant to address the commissioners' concerns about the restrooms and parking. Andrew Leahy, owner and operator of Day Star Montessori, discussed the parking plan and said they meet the requirements, and spoke about the ratio of students per restroom and the allowance for a diaper changing station in place of a restroom for toddlers.

There was discussion about parking for the 16 staff members. Eric Alexander, a partner of the preschool, said some staff members carpool and others live in the area and walk to work. He added that parking is at 51% of capacity at their busiest times and adding students should not exceed the parking available.

Vice Chair Madnawat opened the public hearing and there were two speakers.

Milpitas resident Dave Siddell spoke in favor of the school and said he hopes the commission will approve the expansion.

A gentleman with a business located next to the school said they have been very good neighbors and there have been no parking concerns.

Motion to close the public hearing.

Motion/Second: Commissioner Sandhu/Commissioner Maglalang

Planning Commission Meeting Minutes

October 14, 2015

Page 2

AYES: 7

NOES: 0

Vice Chair Madnawat asked if staff is comfortable with the parking situation and Mr. Ekern said they are. He said staff can work with the applicant if complaints are received and they will keep an eye on the parking situation on Dempsey Road.

Motion to Adopt Resolution No. 15-026 approving Conditional Use Permit Amendment No. UA14-0006 to allow for the expansion of an existing preschool facility for a maximum of 150 students in an existing commercial building located at 215 Dempsey Road, subject to the findings and Conditions of Approval.

Motion/Second: Commissioner Morris/Commissioner Lien

AYES: 7

NOES: 0

IX-2

PARADISE SPA CUP AMENDMENT – 200 SERRA WAY SUITE 4 – UA15-0004:

A request for a 782 square foot tenant expansion to accommodate three new massage treatment rooms, tanning room and ancillary space to an existing massage establishment.

Project Planner Cindy Hom provided an overview of the item.

Commissioner Morris referenced a letter from a resident opposing the spa expansion. Ms. Hom said the spa is located in a shopping center with various different uses, is compatible, and adds to the vitality of the center. She noted there were no police reports relating to the use at this site.

Vice Chair Madnawat opened the public hearing and there were no speakers.

Motion to close the public hearing.

Motion/Second: Commissioner Sandhu/Commissioner Maglalang

AYES: 7

NOES: 0

Commissioner Morris asked about reviewing the project after one year. It was agreed that staff will review the project after one year, and if there have been no complaints will make the decision at staff level to extend the permit without returning to the commission.

Motion to Adopt Resolution No. 15-032 approving Conditional Use Permit Amendment No. UA15-0004 to allow for a 782 square foot tenant expansion to an existing massage establishment subject to the findings and conditions of approval with a condition that staff review the permit after one year.

Motion/Second: Commissioner Morris/Commissioner Maglalang

AYES: 7

NOES: 0

IX-3

SPECIAL EVENTS ORDINANCE – ZA15-0004: A request for a Zoning Text Amendment to adopt new provisions in the Zoning Ordinance to establish review requirements and general regulations for special events and activities.

Project Planner Cindy Hom provided an overview of the ordinance and proposed revisions.

Vice Chair Madnawat asked if it will be possible for staff to provide an estimate of costs to applicants for small events that do not require road closures. Mr. Ekern said it is difficult to estimate costs but hopes the ordinance will provide better cost control and help address uncertainties up front and eliminate surprises at the end.

Commissioner Maglalang asked if the ordinance will reduce the number of subcommittee meetings and Mr. Ekern said it will, adding that permits are often needed at the last minute, requiring a special meeting, and the ordinance will eliminate that and allow staff to process them.

Commissioner Sandhu asked if applicants for special event will be aware of the fees and that permits need to be obtained by other departments, and Ms. Hom said staff will try to provide an estimate and will update the applications which should help process the paperwork through other departments.

Commissioner Morris said she would like more time to review the ordinance since she did not have a chance to do so.

Vice Chair Madnawat opened the public hearing and there was one speaker.

Milpitas resident Dave Siddell spoke about the ordinance and his opinion that it violates the constitution and freedom of assembly. Attorney Katy Wisinski said she reviewed the ordinance in light of protecting the first amendment liberties. As written, it completely exempted from the permit requirement any first amendment events that arise as a result of a contemporaneous decision or event that may give rise to a spontaneous speech and referred to exemptions to the permit requirements in Section 10-15.06e.

Ms. Wisinski said there may be other situations that are not responsive to something so immediate but may impact the community by shutting down a street or requiring police protection and in those instances the city is authorized to require a permit for that type of event in order to balance the public interest between first amendment expression and the communities needs and the impact of that expression on the community. She said this is the balance they have sought in this ordinance.

Motion to close the public hearing.

Motion/Second: Commissioner Morris/Commissioner Maglalang

AYES: 7

NOES: 0

Motion to Adopt Resolution No. 15-017 recommending the City Council adopt Zoning Amendment No. ZA15-0004 to amend the Zoning Code to add new provisions relating to special events and activities.

Motion/Second: Commissioner Ciardella/Commissioner Sandhu

AYES: 5

NOES: 2 Morris, Maglalang

X. NEW BUSINESS

NO ITEMS

XI. ADJOURNMENT The meeting was adjourned at 8:40 PM to the next meeting scheduled on Wednesday, October 28, 2015.

Motion to adjourn to the next meeting.

Motion/Second: Commissioner Ciardella/Commissioner Morris

AYES: 7

NOES: 0

*Meeting Minutes submitted by
Planning Secretary Elia Escobar*

RESOLUTION NO. 15-017**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
RECOMMENDING THE CITY COUNCIL ADOPT ZONING AMENDMENT NO. ZA15-
0004 TO INTRODUCE AN ORDINANCE RELATING TO SPECIAL EVENTS AND
ACTIVITIES**

WHEREAS, the regulations for special events and activities are currently listed under Temporary Uses (Section 13) of the Milpitas Zoning Ordinance which establishes the general requirements for review and approval; and

WHEREAS, the Planning Commission Subcommittee directed staff to further streamline the permit process for special events and activities given the number of annual events that are held by various groups and companies in the City of Milpitas; and

WHEREAS, on August 1, 2014, the Planning Division initiated a process to amend the Milpitas Zoning Ordinance to clarify and streamline the review and permitting process for special events and activities; and

WHEREAS, the proposed text amendment will create certain efficiencies for permit reviews in that it will provide for uniform procedures to promote and protect the rights of those organizing and participating in special events, and those living and working nearby; and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA) and recommends that the Planning Commission determine this project is exempt and will not have a significant effect on the environment; and

WHEREAS, on May 13, 2015, the Planning Commission Subcommittee reviewed and recommended the proposed changes to the Zoning Code; and

WHEREAS, on June 10, 2015, the Planning Commission conducted a duly noticed public hearing and received a report on the proposed Zoning Code text amendment to the Milpitas Zoning Code; and

WHEREAS, on October 14, 2015, the Planning Commission conducted a duly noticed public hearing meeting and adopted Resolution No. 15-017, recommending the City Council amend the Milpitas Zoning Code to (i) delete the definition of "Special Events" from Section 2 "Definitions"; (ii) amend Section 13 "Special Uses" to delete the existing special event provisions; (iii) add a new Section 15 entitled "Special Events and Activities; (iv) amend Section 24 "Signs" to delete reference to Section 13 "Special Uses" and add a new reference to the new Section 15 "Special Events and Activities;" (v) delete the reference to "Special Events and Activities" in Table 57.04-1 "Applications"; and (vi) add a new reference to "Special Event Permits" to Table 64.02-1 "Development Review Process."; and

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

SECTION 1: The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2: The Planning Commission has reviewed and exercised its independent judgment on the environmental review for the Zoning Amendment to adopt provisions relating to Special Events and Activities to the Zoning Code, in accordance with the requirements of the CEQA, and State and local guidelines implementing CEQA, and determined that the Zoning Amendment will not have a significant effect on the environment pursuant to CEQA Guidelines sections 15060(c)(2), 15061(b)(3) (general rule), 15183 (projects consistent with a community plan, general plan, or zoning), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance. The Zoning Amendment is not subject to further CEQA review since the Zoning Code Amendment is covered by the general rule that CEQA applies only to projects, which have the potential for causing significant effect on the environment. It can be seen with certainty that there is no possibility that the Amendment may have a significant impact on the environment because the proposed Amendment will not expand the range of uses permitted in the Zoning Code, nor will it increase the development intensity of uses authorized in the Zoning Code. The proposed Zoning Amendment consists of Zoning Code text changes which include the removal of the definition of Special Events and Activities in Section 2, the removal of provisions for Special Events and Activities in Section 13.11 (G), the creation of Section 15 for Special Events and Activities, the removal of reference to Special Events and Activities from Section 57, Table XI-10-57.04-1 and the addition of a reference to "Special Event Permits" to Section 64, Table XI-10-64.02-1. Therefore, the proposed action qualifies for this exemption and no further environmental review is required.

SECTION 3: Zoning Text Amendment (Section XI-10-57.02.G.3)

1. The proposed amendment is consistent with the General Plan.

The proposed Ordinance is consistent with and implements the City of Milpitas' General Plan. The Ordinance promotes and encourages events for the greater good and cultural diversity of the City and establishes a structured process for permitting special events and activities that insure the City, residents and visitors have adequate notice of proposed events and activities and that the events and activities are properly planned and coordinated.

The project is also consistent with the following General Plan Land Use Element Guiding Principles and Policies:

- Implementing Policy No. 2.a-I-7 Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.

- Implementing Policy No. 2.d-G-2 - Develop adequate civic, recreational, and cultural centers in locations for the best service to the community and in ways which will protect and promote community beauty and growth. The zoning amendment will implement this policy by facilitating the use of enumerated public spaces for special events and activities serving the community.

2. *The proposed amendment will not adversely affect the public health, safety and welfare of the residents of Milpitas.*

The proposed zoning amendment will include provisions to ensure that public health, safety, and the general welfare standards are met for special events and activities. The zoning provisions will provide requirements, establish permit application filing procedures and provisions for permit approvals and denials.

SECTION 4: The Planning Commission of the City of Milpitas hereby adopts this Resolution No. 15-017 recommending the City Council adopt Zoning Amendment No. ZA15-0004 to amend the Zoning Code to add provisions relating to Special Events and Activities, subject to the findings herein. A copy of the proposed Ordinance is attached to this Resolution for reference.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on October 14, 2015.



Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on October 14, 2015 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Sudhir Mandal			✓	
Larry Ciardella	✓			
Hon Lien	✓			
Demetress Morris		✓		
Rajeev Madnawat	✓			
Gurdev Sandhu	✓			

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Ray Maglalang		✓		
Zeya Mohsin (alternate)	✓			

MEETING MINUTES
ARTS COMMISSION
CITY OF MILPITAS

Minutes: Meeting of the Arts Commission (AC)
Date of Meeting: Monday, September 28, 2015
Place of Meeting: City Hall Committee Conference Room 1st Floor

I. Call to Order Acting Chairperson Hays called the meeting to order at 7:00pm.

II. Pledge of Allegiance Acting Chairperson Hays led the Commission in the Pledge of Allegiance.

III. Roll Call Commissioners Present: Driggers, Foulk, Gill, Hays, Mathias, McGuire, Phan, Roth

Commissioners Absent: Santos and Strauss

City Staff Present: Staff Liaison Jaime Chew, Recording Secretary Justin Yount

City Council Liaison: Council Member Giordano

IV. Seating of Alternates Commissioners Driggers and Roth

V. Approval of Agenda **MOTION** to approve the agenda of September 28, 2015 as submitted.
M/S: Gill/Foulk Ayes: All

VI. Approval of Minutes **MOTION** to approve the minutes of July 27, 2015 as submitted.
M/S: Gill/McGuire Ayes: All

VII. Public Forum None Evelyn Chua announced the Filipino-American Heritage Day event on Saturday, October 10th from 2:00pm to 5:00pm at the Milpitas Senior Center.

VIII. Announcements/Correspondence
Staff Chew announced Justin Yount as new recording secretary for the Commission.

IX. New Business

1. Milpitas Phantom Art Gallery Artist Review– Staff Chew

1. Artist Donald Neff has been an artist for 40 years. He presented paintings which displayed various creeks in Silicon Valley.

Motion to approve artist.

M/S: Foulk/Roth Ayes: All

2. Artist Janet Franco-Velez is a new artist with a background in software engineering. She displayed various artworks, including a self portrait made from magazines.

Motion to approve artist.

M/S: Roth/Foulk Ayes: All

3. Artist David Litman is an aspiring artist. He is a research scientist by training with a background in Biochemistry. He displayed his digital photography, which he describes as bio-morphic.

Motion to approve artist.

M/S: Mathias/Gill Ayes: All

2. Milpitas Arts and Culture In Kind Grant Application – Staff Chew

Two applications were received and reviewed by the Commission. The applications were submitted by the Fil-Am Association of Milpitas and the South Bay Kids.

Motion to approve application submitted by the Fil-Am Association of Milpitas.

M/S: McGuire/Foulk Ayes: All

Motion to approve application submitted by the South Bay Kids.

M/S: Mathias/Gill Ayes: All

3. Milpitas Police Station Art Proposal Review & Selection – Staff Chew

The commission reviewed submittal by artist Vera Lowdermik. The commission voted on the two sketches submitted. One displayed a Police Officer with K9 and the other displayed just the K9. The piece would be displayed in front of police station by the flag pole area on Milpitas Blvd. The commission voted 7-1 in favor of the Police officer with K9.

Motion to forward the Police Officer with K9 sketch to the Police Department.

M/S: Gill/Foulk Ayes: All

4. 2016-2019 Public Art Master Plan Discussion – Staff Chew

The commission reviewed and discussed the three year plan for both new public art projects and maintenance of public art projects. The commission reviewed the recommended plan and will assign budget to each of the projects at the next meeting. The final master plan will then be forwarded to City Council for final approval.

5. November Meeting Schedule – Staff Chew

The regularly scheduled Arts Commission meeting will fall on November 23rd which is the week of the Thanksgiving Holiday. The commission discussed if that date was appropriate and if quorum would be met. The commission unanimously agreed to hold their next meeting on November 16th at 7pm.

X. Liaison Reports

1. City Council – Council Member Giordano gave updates on Council meeting items.
2. Staff Report – Staff Chew announced upcoming city events which included the Veterans Car show on 10/17, Pumpkins in the Park on 10/24, and Tree Lighting on 11/30.

XI. Future Agenda Items

1. Performing Arts Center

XII. Adjournment

There being no further business, the meeting was adjourned at 8:13pm to the next scheduled meeting on November 16, at 7:00pm.

Respectfully Submitted,

Justin Yount
Recording Secretary

City of Milpitas

City Council Regular Meeting Dates Tuesdays at 7:00 PM

2016

January 5 and 19
February 2 and 16
March 1 and 15
April 5 and 19
May 3 and 17
June 7 and 21
July – none
*July 7
August 2 and 16
September 6 and 20
October 4 and 18
November 1 and 15
December 6 and 20
*December 13

*Special meetings will be necessary in 2016 to accept and confirm certified election results for elections scheduled on June 7, 2016 and November 8, 2016. Dates listed in July and December are recommended by staff and may be adjusted into the year 2016.

CITY OF MILPITAS
INVESTMENT PORTFOLIO STATUS

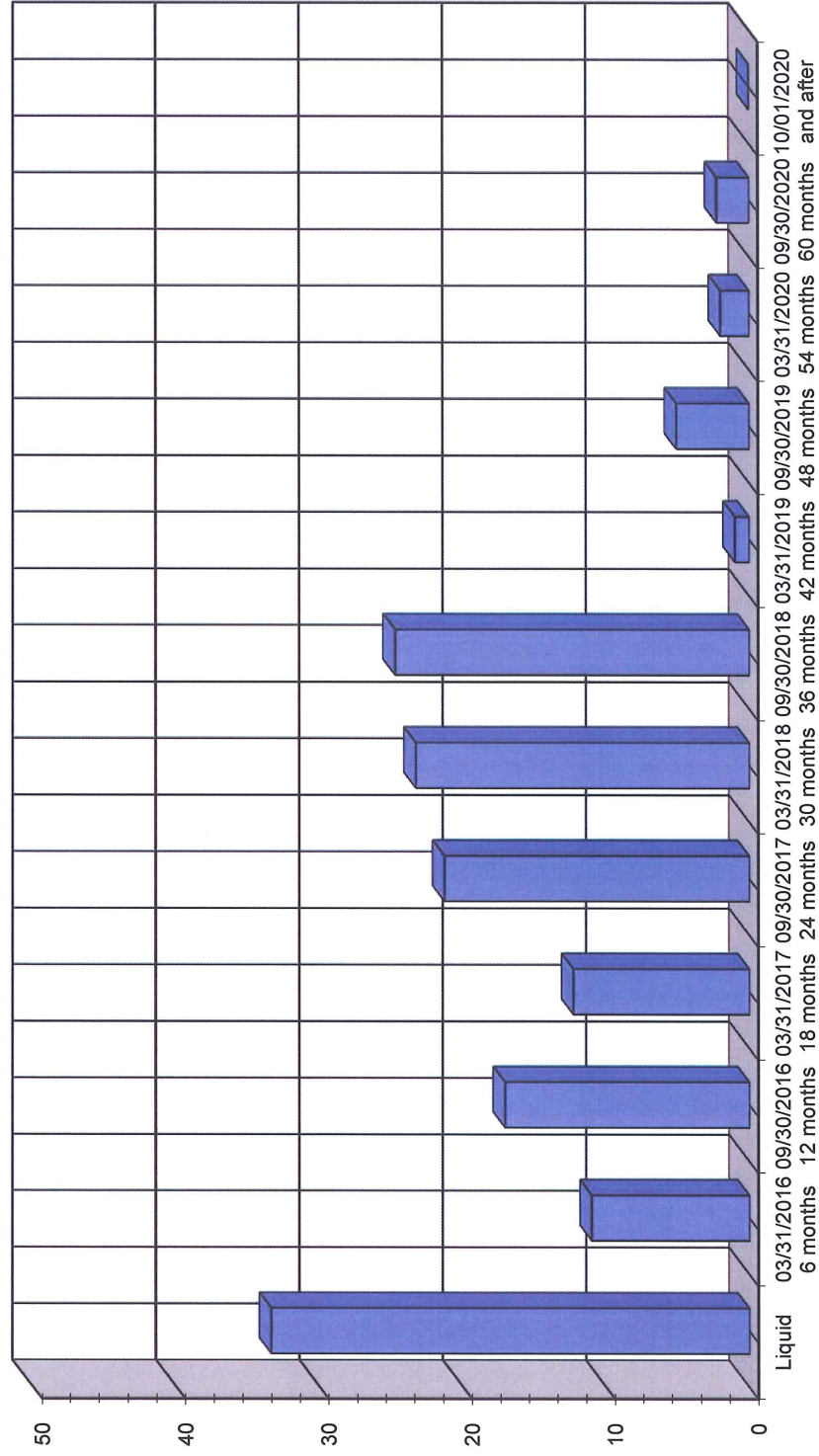
PERCENT OF TOTAL DOLLARS INVESTED AT QUARTER ENDED

<u>TYPE OF SECURITY</u>	<u>Sep-15</u>	<u>Jun-15</u>	<u>Mar-15</u>	<u>Dec-14</u>
LAIF & Money Market	21	27	28	31
Corporate Medium Term Notes	11	9	8	9
Treasury Notes / Bills	19	16	18	18
Federal Agency	47	47	45	41
Negotiable CD's	2	1	1	1
	100	100	100	100

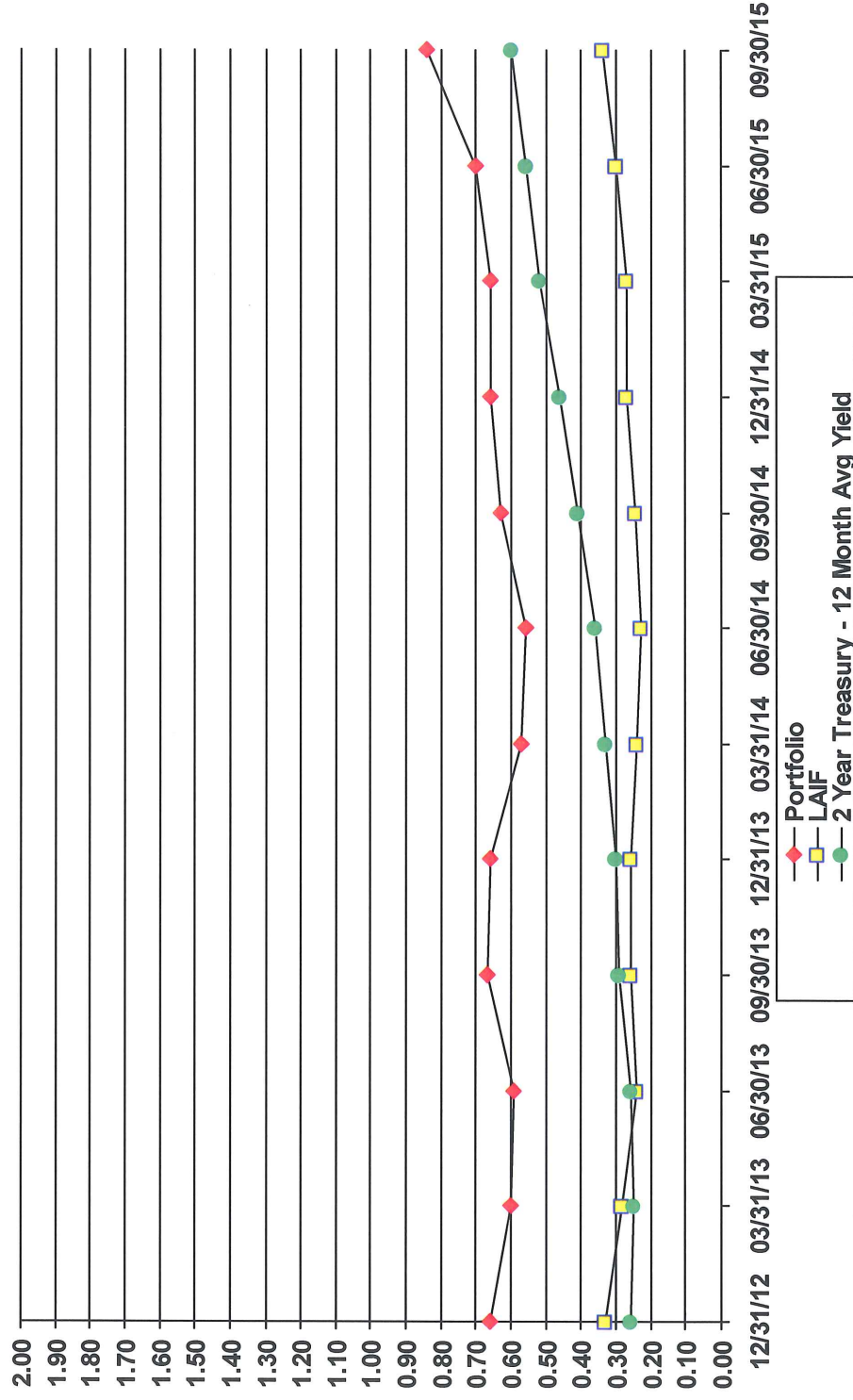
	<u>Sep-15</u>	<u>Jun-15</u>	<u>Mar-15</u>	<u>Dec-14</u>
Market Value	153,400,751	182,525,010	162,631,657	152,935,989
Cost	152,869,838	182,337,137	162,155,260	152,924,177
<u>Days</u>				
Weighted Average Maturity	558	507	510	517
<u>Rates</u>				
Average Yield	0.84%	0.70%	0.66%	0.66%
<u>Benchmarks:</u>				
LAIF	0.34%	0.30%	0.27%	0.27%
2 Year Treasury - (12 Month Average)	0.60%	0.56%	0.52%	0.46%

Exhibit 2

**City of Milpitas Investment Portfolio
Maturity by Six Month Intervals as of 09/30/2015**



City of Milpitas Investment Portfolio Yields Compared to Benchmarks for the Quarters Ended 12/31/12 – 09/30/15



City of Milpitas
Portfolio Management
Portfolio Summary
September 30, 2015

Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Maturity	YTM 360 Equiv.	YTM 365 Equiv.
LAIF	30,000,000.00	30,017,839.38	30,000,000.00	19.62	1	1	0.332	0.337
Money Market Funds	2,603,701.36	2,603,701.36	2,603,701.36	1.70	1	1	0.009	0.009
Corporate Notes	16,000,000.00	16,051,976.66	16,054,586.17	10.50	1,325	635	0.958	0.971
Federal Agency	72,000,000.00	72,325,961.39	72,000,668.47	47.10	1,405	765	1.077	1.092
Treasury Coupon Securities	29,000,000.00	29,104,110.00	28,951,427.80	18.94	1,191	543	0.863	0.875
GNMA	9,454.49	9,559.10	9,454.49	0.01	7,210	544	8.062	8.174
Negotiable CDs -2	3,250,000.00	3,287,602.81	3,250,000.00	2.13	1,069	887	1.250	1.268
Investments	152,863,155.85	153,400,750.70	152,869,838.29	100.00%	1,050	558	0.864	0.876

Cash								
Passbook/Checking (not included in yield calculations)	1,971,821.14	1,971,821.14	1,971,821.14		1	1	0.019	0.019
Total Cash and Investments	154,834,976.99	155,372,571.84	154,841,659.43		1,050	558	0.864	0.876

Total Earnings	September 30	Month Ending	Fiscal Year To Date
Current Year	108,013.66	297,757.12	
Average Daily Balance	155,875,540.42	165,835,593.86	
Effective Rate of Return	0.84%	0.71%	

To the best of my knowledge, this report accurately reflects all City and RDA pooled investments and is in conformity with all State laws and the City's investment policy. A copy of the policy is available at the office of the City Clerk. This investment program herein shown provides sufficient cash flow liquidity to meet next six months' estimated expenditures.

Emma C. Karlen
 Emma C. Karlen, Director of Finance

Reporting period 09/01/2015-09/30/2015

Run Date: 10/22/2015 - 12:01

Portfolio MILP
 AC
 PM (PRF_PM1) 7.3.0
 Report Ver. 7.3.5

City of Milpitas
Portfolio Management
Portfolio Details - Investments
September 30, 2015

Page 1

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 365	Days to Maturity	Maturity Date
LAIF												
SYS82000010	82000010	Local Agency Invest. Fd - City			18,400,000.00	18,410,941.49	18,400,000.00	0.337		0.337	1	
SYS97090401	97090401	Local Agency Invest. Fd - MPFA			11,600,000.00	11,606,897.89	11,600,000.00	0.337		0.337	1	
	Subtotal and Average		27,170,000.00		30,000,000.00	30,017,839.38	30,000,000.00			0.337	1	
Money Market Funds												
SYS	150601930	Dreyfus Treasury & Agency Fund			98,181.21	98,181.21	98,181.21	0.010	AAA	0.010	1	
HBOC	150701103	Heritage Bank of Commerce		07/01/2015	307,688.51	307,688.51	307,688.51			0.000	1	
SYS	150317318	U S Bank			0.00	0.00	0.00	0.010	AAA	0.010	1	
SYS	150317319	U S Bank			2,197,831.64	2,197,831.64	2,197,831.64	0.010	AAA	0.010	1	
	Subtotal and Average		7,496,195.34		2,603,701.36	2,603,701.36	2,603,701.36			0.009	1	
Corporate Notes												
06366RJH9	12110601	Bank of Montreal		11/06/2012	1,000,000.00	1,000,300.00	1,000,068.06	0.800	A+	0.729	36	11/06/2015
822582AU6	12120801	Shell Int'l Finance BV		12/06/2012	1,000,000.00	1,000,430.00	1,000,118.05	0.625	AA	0.557	64	12/04/2015
38259PAC6	12120602	Google Inc		12/06/2012	1,000,000.00	1,010,390.00	1,009,158.52	2.125	AA	0.660	231	05/19/2016
742718DV8	13051302	Proctor & Gamble Co		05/13/2013	1,000,000.00	1,008,650.00	1,007,903.58	1.450	AA-	0.535	319	08/15/2016
89233PE2	13052001	Toyota Motor Credit		05/20/2013	1,000,000.00	1,011,710.00	1,011,146.18	2.000	AA-	0.815	350	09/15/2016
88579YAD3	12021401	3M Company		02/14/2012	2,000,000.00	2,016,200.00	2,007,263.21	1.375	AA-	1.000	364	09/29/2016
166764AA8	13060501	Chevron Corporation		06/05/2013	1,000,000.00	995,990.00	998,388.44	1.104	AA	1.180	796	12/05/2017
166764AV2	15041701	Chevron Corporation		04/17/2015	1,000,000.00	1,000,910.00	1,007,245.71	1.365	AA	1.060	883	03/02/2018
30231GAL6	15031201	Exxon Capital Corp		03/12/2015	1,000,000.00	1,002,360.00	1,000,733.24	1.305	AAA	1.274	887	03/06/2018
931142DF7	15031202	Walmart Stores		03/12/2015	1,000,000.00	999,230.00	997,645.00	1.125	AA	1.220	923	04/11/2018
594918AS3	15060502	Microsoft Corp		06/05/2015	1,000,000.00	999,124.44	999,673.03	1.000	AAA	1.050	943	05/01/2018
037833AJ9	13051301	Apple Inc		05/13/2013	2,000,000.00	1,990,660.00	1,997,479.96	1.000	AA+	1.050	945	05/03/2018
084664BW0	15060501	Berkshire Hathaway Financial		06/05/2015	1,000,000.00	1,002,772.22	1,003,031.46	1.300	AA	1.210	957	05/15/2018
594918AV6	15052801	Microsoft Corp		05/26/2015	1,000,000.00	1,013,250.00	1,014,731.73	1.625	AAA	1.151	1,162	12/06/2018
	Subtotal and Average		16,856,704.63		16,000,000.00	16,051,976.66	16,054,586.17			0.971	635	
Federal Agency												
3133ECTC8	13062801	Federal Farm Credit Bank		06/28/2013	2,000,000.00	2,003,640.00	1,999,647.74	0.640	AA+	0.695	119	01/28/2016
313375RN9	12020901	Federal Home Loan Bank		02/09/2012	2,000,000.00	2,006,960.00	2,002,445.65	1.000	AA+	0.720	162	03/11/2016
313375RN9	12062903	Federal Home Loan Bank		06/29/2012	2,000,000.00	2,006,960.00	2,003,068.61	1.000	AA+	0.650	162	03/11/2016
3133EARB6	12062902	Federal Farm Credit Bank		06/29/2012	1,000,000.00	1,002,770.00	1,000,617.54	0.750	AA+	0.650	229	05/17/2016
3133EAUH9	12061401	Federal Farm Credit Bank		06/14/2012	3,000,000.00	3,009,090.00	3,000,000.00	0.750	AA+	0.750	257	06/14/2016
3133EAVQ8	12062901	Federal Farm Credit Bank		06/29/2012	2,000,000.00	2,007,500.00	2,000,000.00	0.800	AA+	0.800	427	12/01/2016

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CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 365	Days to Maturity	Maturity Date
Federal Agency												
313383FB2	13061901	Federal Home Loan Bank		06/19/2013	2,000,000.00	2,002,960.00	2,000,000.00	0.580	AA+	0.580	445	12/19/2016
3133EDNC2	14061301A	Federal Farm Credit Bank		06/13/2014	1,600,000.00	1,604,432.00	1,600,000.00	0.700	AA+	0.700	470	01/13/2017
3133EDNC2	14061301B	Federal Farm Credit Bank		06/13/2014	400,000.00	401,108.00	400,000.00	0.700	AA+	0.700	470	01/13/2017
3136G1E88	13022702	Federal Nat'l. Mortgage Assoc		02/27/2013	1,000,000.00	1,002,720.00	1,000,000.00	0.750	AA+	0.750	515	02/27/2017
3133ECT79	13062701	Federal Farm Credit Bank		06/27/2013	2,000,000.00	2,012,680.00	2,000,000.00	1.000	AA+	1.000	517	03/01/2017
3133ECMM3	13042501	Federal Farm Credit Bank		04/25/2013	2,000,000.00	2,000,000.00	2,000,000.00	0.600	AA+	0.600	572	04/25/2017
3133ECPA6	13051502	Federal Farm Credit Bank		05/15/2013	2,000,000.00	1,995,360.00	2,000,000.00	0.600	AA+	0.600	592	05/15/2017
3134G43S5	13051501	Fed Home Loan Mortgage Corp		05/15/2013	2,000,000.00	1,998,620.00	2,000,000.00	0.650	AA+	0.650	592	05/15/2017
3133EDPC0	14062701	Federal Farm Credit Bank		06/27/2014	2,000,000.00	2,010,520.00	2,000,000.00	1.000	AA+	1.000	635	06/27/2017
3133EDEB4	14012801	Federal Farm Credit Bank		01/28/2014	2,000,000.00	2,015,420.00	2,000,000.00	1.100	AA+	1.100	636	06/28/2017
3133EDXH0	14101401	Federal Farm Credit Bank		10/14/2014	2,000,000.00	2,032,260.00	2,000,000.00	1.000	AA+	1.000	652	07/14/2017
3133EDKP6	14050101	Federal Farm Credit Bank		05/01/2014	2,000,000.00	2,013,080.00	2,000,000.00	1.070	AA+	1.070	701	09/01/2017
3134G3J68	13053001	Fed Home Loan Mortgage Corp		05/30/2013	2,000,000.00	1,999,780.00	1,998,072.55	0.900	AA+	0.950	718	09/18/2017
3133ED3Z3	13100401	Federal Farm Credit Bank		10/04/2013	2,000,000.00	2,016,860.00	2,000,000.00	1.230	AA+	1.230	734	10/04/2017
3136GQL58	12101801	Federal Nat'l. Mortgage Assoc		10/18/2012	1,000,000.00	1,000,360.00	1,000,000.00	1.000	AA+	1.000	748	10/18/2017
3130A3QQ0	14122901	Federal Home Loan Bank		12/29/2014	1,000,000.00	1,007,480.00	1,000,000.00	1.150	AA+	1.150	820	12/29/2017
3135GQUE1	13021401	Federal Nat'l. Mortgage Assoc		02/14/2013	3,000,000.00	3,006,840.00	3,000,000.00	1.000	AA+	1.000	867	02/14/2018
3136G23B1	14081501	Federal Nat'l. Mortgage Assoc		08/15/2014	2,000,000.00	2,008,800.00	2,000,000.00	1.300	AA+	1.300	868	02/15/2018
3133EEQM5	15022001	Federal Farm Credit Bank		02/20/2015	2,000,000.00	2,009,820.00	2,000,000.00	1.110	AA	1.110	873	02/20/2018
3136G1DG1	13022701	Federal Nat'l. Mortgage Assoc		02/27/2013	2,000,000.00	2,007,840.00	2,000,000.00	1.050	AA+	1.050	880	02/27/2018
3130A4Y71	15041501	Federal Home Loan Bank		04/15/2015	2,000,000.00	2,001,420.00	2,000,000.00	1.000	AA+	1.000	988	06/15/2018
3130A5BK4	15052201	Federal Home Loan Bank		05/22/2015	2,000,000.00	1,999,740.00	1,998,001.00	1.000	AA+	1.037	1,002	06/29/2018
3130A57J2	15050601	Federal Home Loan Bank		05/06/2015	2,000,000.00	2,001,620.00	2,000,000.00	1.000	AA+	1.000	1,009	07/06/2018
3133ECW75	13080101	Federal Farm Credit Bank		08/01/2013	2,000,000.00	2,024,320.00	2,000,000.00	1.610	AA+	1.610	1,035	08/01/2018
3133EE6G0	15081701	Federal Farm Credit Bank		08/17/2015	1,000,000.00	1,003,861.39	999,977.44	1.150	AA+	1.163	1,040	08/06/2018
3130A4DP4	15022701	Federal Home Loan Bank		02/27/2015	2,000,000.00	2,009,360.00	2,000,000.00	1.300	AA+	1.300	1,061	08/27/2018
3130A6AB3	15082801	Federal Home Loan Bank		08/28/2015	2,000,000.00	2,009,200.00	2,000,000.00	1.200	AA+	1.200	1,062	08/28/2018
3130A5K73	15061201	Federal Home Loan Bank		06/12/2015	2,000,000.00	2,004,040.00	1,998,837.84	1.200	AA+	1.220	1,091	09/26/2018
3136G24C8	14082901	Federal Nat'l. Mortgage Assoc		08/29/2014	3,000,000.00	3,042,720.00	3,000,000.00	2.000	AA+	2.000	1,425	08/26/2019
3136G25W3	14091201	Federal Nat'l. Mortgage Assoc		09/12/2014	2,000,000.00	2,007,380.00	2,000,000.00	1.000	AA+	2.174	1,442	09/12/2019
3136G2C96	15012301	Federal Nat'l. Mortgage Assoc		01/23/2015	2,000,000.00	2,022,080.00	2,000,000.00	2.000	AA+	2.000	1,575	01/23/2020
3130A5NN5	15063001	Federal Home Loan Bank		06/30/2015	2,000,000.00	2,016,360.00	2,000,000.00	2.000	AA+	2.000	1,734	06/30/2020
Subtotal and Average					72,000,000.00	72,325,961.39	72,000,668.47			1.092	785	

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CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 365	Days to Maturity	Maturity Date
Treasury Coupon Securities												
912828UG3	13012801	United States Treasury Note		01/28/2013	3,000,000.00	3,002,550.00	2,999,783.88	0.375	AA+	0.400	106	01/15/2016
912828VC1	13053101	United States Treasury Note		05/31/2013	2,000,000.00	2,000,120.00	1,997,504.05	0.250	AA+	0.452	227	05/15/2016
912828VG2	13062401	United States Treasury Note		06/24/2013	2,000,000.00	2,003,480.00	1,997,515.23	0.500	AA+	0.678	258	06/15/2016
912828VL1	13071501	United States Treasury Note		07/15/2013	2,000,000.00	2,004,740.00	1,998,523.21	0.625	AA+	0.720	288	07/15/2016
912828VR8	13082801	United States Treasury Note		08/26/2013	2,000,000.00	2,004,580.00	1,996,991.00	0.625	AA+	0.800	319	08/15/2016
912828RJ1	11101101	United States Treasury Note		10/11/2011	2,000,000.00	2,012,100.00	1,999,026.45	1.000	AA+	1.050	365	09/30/2016
912828C32	14032001	United States Treasury Note		03/20/2014	1,000,000.00	1,003,410.00	998,326.94	0.750	AA+	0.867	531	03/15/2017
912828WH9	14051501	United States Treasury Note		05/15/2014	2,000,000.00	2,010,120.00	1,998,887.30	0.875	AA+	0.910	592	05/15/2017
912828TB6	14061302	United States Treasury Note		06/13/2014	1,000,000.00	1,002,750.00	996,865.17	0.750	AA+	0.932	638	06/30/2017
912828WT3	14071501	United States Treasury Note		07/15/2014	2,000,000.00	2,009,400.00	1,995,159.10	0.875	AA+	1.013	663	07/15/2017
912828G20	14111701	United States Treasury Note		11/17/2014	2,000,000.00	2,007,080.00	1,994,779.38	0.875	AA+	1.000	776	11/15/2017
912828G79	14121501	United States Treasury Note		12/15/2014	2,000,000.00	2,012,400.00	1,996,093.18	1.000	AA+	1.090	806	12/15/2017
912828J68	15031601	United States Treasury Note		03/16/2015	2,000,000.00	2,010,380.00	1,996,628.75	1.000	AA+	1.070	896	03/15/2018
912828VE7	13062101	United States Treasury Note		06/21/2013	2,000,000.00	2,007,320.00	1,985,344.36	1.000	AA+	1.285	973	05/31/2018
912828XF2	15061501	United States Treasury Note		06/15/2015	2,000,000.00	2,013,680.00	2,000,000.00	1.125	AA+	1.125	988	06/15/2018
Subtotal and Average					29,000,000.00	29,104,110.00	28,951,427.80			0.875	543	

GNMA												
36216NNL3	88021601A	GNMA		07/01/1997	602.45	605.03	602.45	9.500	AA+	9.615	380	10/15/2016
362174T46	87042001C	GNMA		07/01/1997	2,050.41	2,074.36	2,050.41	8.000	AA+	8.075	531	03/15/2017
36217FKE8	87042001A	GNMA		07/01/1997	6,801.63	6,879.71	6,801.63	8.000	AA+	8.076	562	04/15/2017
Subtotal and Average					9,454.49	9,559.10	9,454.49			8.174	544	

Negotiable CDs -2												
254672BR8	14101602	Discover Bank		10/16/2014	250,000.00	250,522.68	250,000.00	1.050	BBB	0.844	382	10/17/2016
05573J4P6	15092301	BMO Harris Bank NA		09/23/2015	250,000.00	251,665.75	250,000.00	1.100	A+	1.101	722	09/22/2017
49306SVE3	15093002	Key Bank NA		09/30/2015	250,000.00	251,981.38	250,000.00	1.150	A-	1.152	732	10/02/2017
36163CWS5	14101001	GE Capital Bank		10/10/2014	250,000.00	253,531.43	250,000.00	1.450	AA+	1.451	740	10/10/2017
140420QD5	14101601	Capital One Bank USA		10/16/2014	250,000.00	253,559.63	250,000.00	1.450	BBB+	1.451	746	10/16/2017
38148JBF7	14102901	Goldman Sachs Bank USA		10/29/2014	250,000.00	253,525.20	250,000.00	1.450	A	1.249	760	10/30/2017
05580AAY0	14111401	BMW Bank of North America		11/14/2014	250,000.00	253,327.18	250,000.00	1.400		1.401	775	11/14/2017
29266NF28	14120501	EnerBank USA		12/05/2014	250,000.00	252,215.68	250,000.00	1.200	NR	1.201	796	12/05/2017
564759QQ4	15051301	Manufacturers & Traders Trust		05/13/2015	250,000.00	251,014.63	250,000.00	1.050	A	0.904	956	05/14/2018
02587CDK3	15070801	American Express Bk FSB		07/08/2015	250,000.00	254,950.70	250,000.00	1.650	A-	1.422	1,012	07/09/2018
06740KJH1	15091601	Barclays Bank Delaware		09/16/2015	250,000.00	254,627.95	250,000.00	1.600	NR	1.379	1,082	09/17/2018

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CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 365	Days to Maturity	Maturity Date
Negotiable CDs -2												
14042RAG6	15093001	Capital One NA		09/30/2015	250,000.00	254,910.35	250,000.00	1.650	BBB+	1.422	1,096	10/01/2018
94986TUG0	15063002	Wells Fargo Bank		06/30/2015	250,000.00	251,770.25	250,000.00	1.500	AA-	1.502	1,734	06/30/2020
		Subtotal and Average	2,458,333.33		3,250,000.00	3,287,602.81	3,250,000.00			1.268	887	
		Total and Average	155,875,540.42		152,863,155.85	153,400,750.70	152,869,838.29			0.876	558	

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CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 365	Days to Maturity
Money Market Funds											
SYS1000	1000	Cash in Bank			401,910.00	401,910.00	401,910.00	0.090		0.090	1
SYS1000	131127930	Cash in Bank			79,998.76	79,998.76	79,998.76	0.020		0.020	1
SYS1030	1030A	Cash with Fiscal Agent			1,474,684.88	1,474,684.88	1,474,684.88			0.000	1
SYS1030	1030B	Cash with Fiscal Agent			15,227.50	15,227.50	15,227.50			0.000	1
		Average Balance	0.00								1
		Total Cash and Investments	155,875,540.42		154,834,976.99	155,372,571.84	154,841,659.43			0.876	558

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Activity By Type

September 1, 2015 through September 30, 2015

CUSIP	Investment #	Issuer	Stated Rate	Transaction Date	Purchases or Deposits	Redemptions or Withdrawals	Balance
LAIF (Monthly Summary)							
SYS82000010	82000010	Local Agency Invest. Fd - City	0.337		4,500,000.00	300,000.00	
		Subtotal			4,500,000.00	300,000.00	30,000,000.00
Money Market Funds (Monthly Summary)							
SYS1000	1000	Cash in Bank	0.090		401,910.00	430,317.00	
SYS1000	131127930	Cash in Bank	0.020		1.22	4,587.83	
SYS	150601930	Dreyfus Treasury & Agency Fund	0.010		0.86	0.00	
SYS1030	1030A	Cash with Fiscal Agent			1,474,684.88	4,146,270.58	
SYS1030	1030B	Cash with Fiscal Agent			15,227.50	15,227.42	
HBOC	150701103	Heritage Bank of Commerce			307,688.51	291,596.96	
SYS	150317319	U S Bank	0.010		0.00	603,465.54	
		Subtotal			2,199,512.97	5,491,465.33	2,603,701.36
Corporate Notes							
961214BW2	12100201	Westpac Banking Corp	1.125	09/25/2015	0.00	1,000,000.00	
		Subtotal			0.00	1,000,000.00	16,054,586.17
Federal Agency							
3133EAQV3	12051501	Federal Farm Credit Bank	0.550	09/15/2015	0.00	2,000,000.00	
		Subtotal			0.00	2,000,000.00	72,000,668.47
Treasury Coupon Securities							
		Subtotal					28,951,427.80
GNMA							
36217FKE8	87042001A	GNMA	8.000	09/15/2015	0.00	368.58	
362174T46	87042001C	GNMA	8.000	09/15/2015	0.00	126.00	
36216NNL3	88021601A	GNMA	9.500	09/15/2015	0.00	68.44	
		Subtotal			0.00	563.02	9,454.49
Negotiable CDs -2							
06740KJH1	15091601	Barclays Bank Delaware	1.600	09/16/2015	250,000.00	0.00	
05573J4P6	15092301	BMO Harris Bank NA	1.100	09/23/2015	250,000.00	0.00	
14042RAG6	15093001	Capital One NA	1.650	09/30/2015	250,000.00	0.00	

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CUSIP	Investment #	Issuer	Stated Rate	Transaction Date	Purchases or Deposits	Redemptions or Withdrawals	Balance
Negotiable CDs -2							
49306SVE3	15093002	Key Bank NA	1.150	09/30/2015	250,000.00	0.00	
		Subtotal			1,000,000.00	0.00	3,250,000.00
		Total			7,699,512.97	8,792,028.35	152,869,838.29

City of Milpitas

Investment Broker Dealer List

Dreyfus Institutional Services

Mischler Financial Group, Inc.

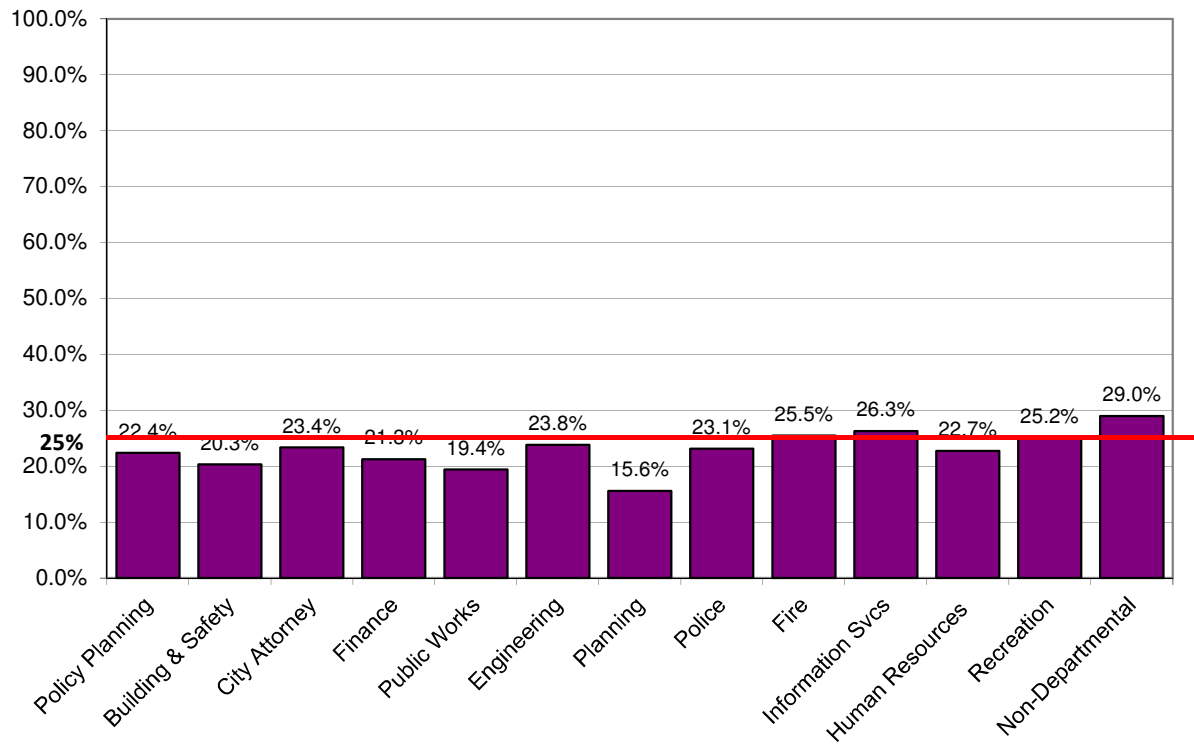
Morgan Stanley Smith Barney

State of California Local Agency Investment Fund

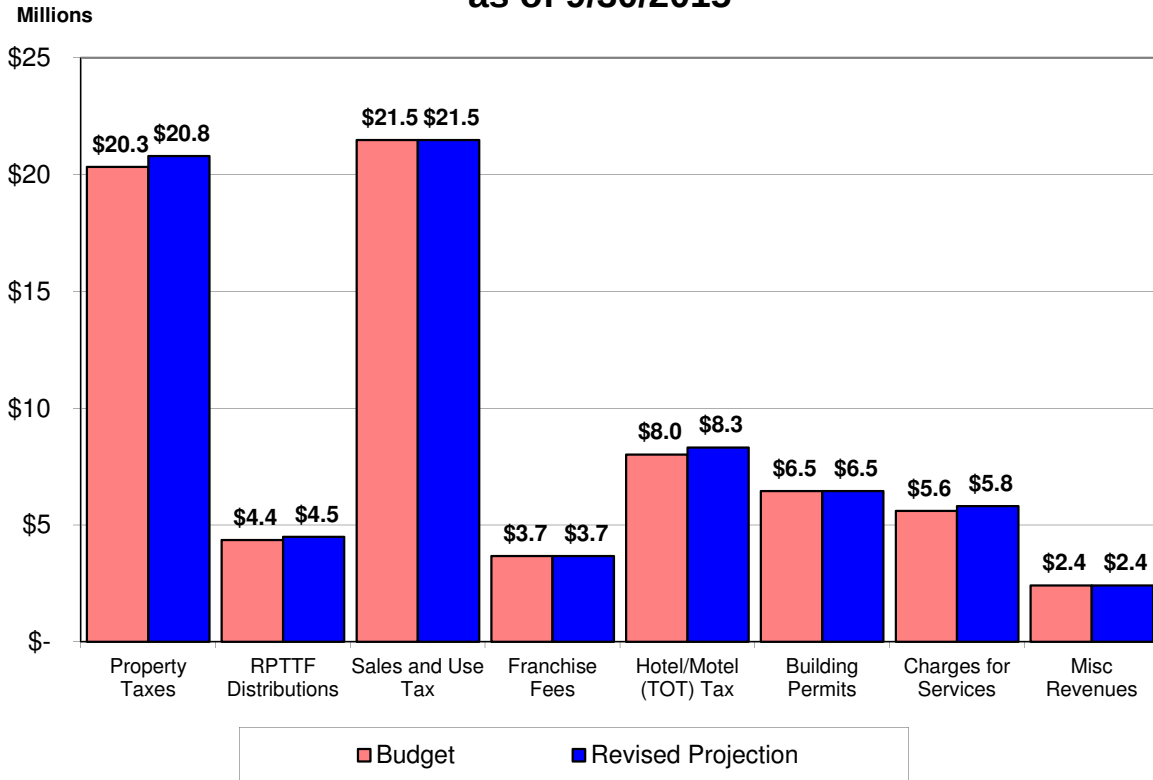
US Bank, N.A.

Vining Sparks IBG, L.P.

General Fund Expenditures by Department
Expenditures As of 9/30/15 - \$18.3 Millions
(24% of Total Budget)



**FY15-16 General Fund Revenue
Budget vs. Revised Projection
as of 9/30/2015**



Recording Requested by and
When Recorded Mail to:

City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
Attention: Office of the City Clerk

Record without fee under
Section 6103 - Government Code
State of California

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING
INITIAL ACCEPTANCE AND REDUCING PERFORMANCE BOND OF AUTOMATED
WATER METER (PHASE 1), PROJECT NO. 7121, AND GRANTING AUTHORIZATION TO
THE DIRECTOR OF ENGINEERING/CITY ENGINEER TO ISSUE THE NOTICE OF FINAL
ACCEPTANCE AFTER THE ONE-YEAR WARRANTY PERIOD AND TO RELEASE AND
DISCHARGE THE PERFORMANCE BOND**

WHEREAS, the City of Milpitas has heretofore entered into a contract with Suarez and Munoz Construction, Inc., for the subject project, and the Director of Engineering/City Engineer of the City of Milpitas has recommended acceptance of said improvement as completed in accordance with plans, specifications and approved change orders and correction lists, and in accordance with the final inspection of said Director of Engineering/City Engineer.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City of Milpitas does hereby accept said improvement as completed on this 3^d day of November, 2015, and does hereby authorize and direct the Director of Engineering/City Engineer of the City of Milpitas to file a Notice of Completion in accordance with the provisions of Sections 8182 and 9200-9208 of the Civil Code of the State of California, and does hereby authorize and direct the Director of Engineering/City Engineer to file a Certificate of Completion in accordance with the provisions of Section 4005 of the Government Code of the State of California, if said work was by day's labor or force account. The penal sum of the faithful performance bond securing said improvement may be reduced to the sum of \$33,330.78 upon request of principal and surety, with said penal sum as reduced to apply from the date of completion and acceptance of said improvements and to extend for the balance of the term of said bond, provided that said term shall not be less than one year.
3. The City Council authorizes the Director of Engineering/City Engineer to issue the Notice of Final Acceptance after the one-year warranty period and to release and discharge the faithful performance bond securing said improvements without further City Council action, provided all required warranty repairs are completed to the satisfaction

of the Director of Engineering/City Engineer; and nothing herein contained shall in any way deemed to be a waiver, release or relinquishment by City of any obligations imposed upon the contractor or its surety, or sureties, by law or by the above-referenced improvement contract, save and except those obligations specifically mentioned herein.

PASSED AND ADOPTED this _____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

Recording Requested by and
When Recorded Mail to:

City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
Attention: City Clerk

Record without fee under
Section 6103 - Government Code
State of California

CITY OF MILPITAS

NOTICE OF COMPLETION
(Civil Code Sections 8182 and 9200-9208)

NOTICE IS HEREBY GIVEN:

1. On or about June 16, 2015, the City of Milpitas, a municipal corporation of the State of California, whose address is City Hall, 455 East Calaveras Boulevard, Milpitas, California, 95035 (as owner) entered into a contract for work of: Automated Water Meter (Phase 1), Project No. 7121.
2. A description of the site of which the City is owner for said work of improvement is: Mobilodge on North Milpitas Boulevard, Friendly Village and Pioneer Mobile Home Park on Dixon Landing Road in the City of Milpitas, Santa Clara County, California, more particularly described on the plans.
3. The nature and interest or estate of the City as owner of said site is: City of Milpitas.
4. The name and address of the original contractor is: Preston Pipelines, Inc., 133 Bothelo Avenue, Milpitas, CA 95035.
5. A general statement of the kind of work done or materials furnished to the City is as follows: Water meter replacement for mobile home parks.
6. The name of the sureties upon the bond of the contractor for said work of improvement is: Liberty Mutual, 71 Stevenson St., San Francisco, CA 94105; bond # 070020728.
7. Said work of improvement was accepted by the Milpitas City Council as completed on November 3, 2015.

I, the undersigned, declare that I am the City Engineer of the City of Milpitas and am authorized to execute the foregoing Notice of Completion and this Verification thereof. I have read the foregoing Notice of Completion. I declare under penalty of perjury that the foregoing Notice of Completion is true and correct. Executed on November 3, 2015, at Milpitas, California.

Steven Machida, Director of Engineering/City
Engineer, City of Milpitas

NOTE: RECORD WITHIN 15 DAYS OF ACCEPTANCE WITH COUNTY RECORDER OF SANTA CLARA COUNTY

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
VERDE DESIGN**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas, a municipal corporation of the State of California referred to herein as the ("City"), and Verde Design, a California Corporation ("Consultant") as of November 3, 2015.

AGREEMENT

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on November 4, 2017, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the professional standards normally observed by a practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial manner and shall conform to the professional standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 Professional Skill.** It is mutually agreed by the parties that City is relying upon the professional skill of the consultant as a specialist in the work, and Consultant represents to the City that its work shall conform to the normal professional standards of the profession. Acceptance of the Consultant's work by the City does not operate as a release of Consultant's representations. It is intended that Consultant's work shall conform to normal standards of accuracy, completeness and coordination.
- 1.4 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment

of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

- 1.5 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant an amount not to exceed One-Hundred Thirty-Seven Thousand Five Hundred dollars (\$137,500) based on time and materials for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours,

which shall include an estimate of the time necessary to complete the work described in Exhibit A

- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. Ten (10) percent shall be retained by the City from each Agreement billing until the completion of the Agreement unless authorized differently by City. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

2.3 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

2.4 Hourly Fees. Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B

2.5 Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.

2.6 Reimbursable Expenses. Reimbursable expenses are shown on Exhibit B, and shall not exceed Seven Thousand Five Hundred dollars (\$7,500). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

2.7 Payment upon Termination. In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant

for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

- 2.8 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the City's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the City.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-

insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each

of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.

- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3 Professional Liability Insurance. If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000) covering the licensed professionals' errors and omissions.

- 4.3.1** Any deductible or self-insured retention shall not exceed \$150,000 per claim.
- 4.3.2** An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
- 4.3.3** The policy must contain a cross liability clause.
- 4.3.4** The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 Requirements for All Policies.

- 4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.
- 4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.
- 4.4.3 Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 4.4.4 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such

deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

4.4.5 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

4.6 Waiver. The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the

actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.

- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:
- 8.6.1** Immediate cancellation of the Agreement;
 - 8.6.2** Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and
 - 8.6.3** Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement

and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

9.2 Consultant's Books and Records. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

10.1 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 Venue. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.

10.3 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in

whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 10.4 No Implied Waiver of Breach** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000*et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090*et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090*et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by Sabeen Cochinwala who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 **Notices.** Any written notice to Consultant shall be sent to:
- Verde Design
Derek McKee, Principal-in-Charge
2455 The Alameda, Suite 200
Santa Clara, CA 95050
- Any written notice to City shall be sent to:
Steven Machida, Director of Engineering
455 East Calaveras Boulevard
Milpitas, California 95035
- 10.11 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.13 **Exhibits.** All exhibits and attachments to exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

CONSULTANT
Verde Design

Thomas C Williams, City Manager

Name & Title

Taxpayer Identification Number

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

Corporate Entity Number

APPROVED AS TO CONTENT:

Steven Machida, Director of Engineering

EXHIBIT A

SPORTS CENTER SPORTS FIELDS

SCOPE OF SERVICES FOR THE SPORTS CENTER SPORTS FIELDS

Verde Design, Inc. respectfully submits the following additional services request to provide construction management services for the Milpitas Sports Center Sports Fields. These extra services to be provided by Kramer Project Development Company Inc. (Kramer) as a sub-consultant to Verde. Kramer shall provide construction management services that are in addition to and in compliment the design and construction administration services provided in the approved Milpitas Sports Center Sports Fields design contract.

The fee amount is a not to exceed amount for time and materials and includes the anticipated work by Kramer Project Development.

A. Service Tasks

1. Track correspondence with contractor including responses for submittals and RFIs
2. Review and track construction schedule and updates
3. Prepare agendas for construction meetings
4. Assist in establishment of project start and completion dates
5. Review and report on project costs, schedule, impacts and budget
6. Coordinate with contractor's operations with City operations and other developers and businesses in the area to avoid conflicts, and serve the best interests of the City.
7. Manage a photographic record of the project
8. Manage processing of submittals and substitutions
9. Assist in monitoring and coordination of construction inspection
10. Maintain updated Project Record Documents
11. Coordinate with inspections with other agencies

12. Review, recommend, and process progress payment applications
13. Administer close-out process
14. Manage submission of contractor's certified payroll and labor compliance
15. Assist in claims and analysis and dispute resolution
16. Assists in analysis and resolution of construction claims
17. Coordinate and consolidate final inspections and punch list
18. Prepare Notice of Completion

B. Deliverables:

1. Project Documentation: Maintain project documents in a neat and orderly manner at all times. Track, record, and process the following documents:
 - a. Submittals
 - b. RFIs
 - c. Request for change orders and change orders
 - d. Notification of Potential Claim or actual claim
 - e. Subcontractor Preliminary Notices and any notices of non-payment
 - f. Certified Payroll records
 - g. Inspection reports
 - h. Materials testing reports
 - i. Special inspection reports
 - j. Progress payment request and final progress payments
 - k. Correspondence
 - l. Project Reporting
 - m. Construction documentation and supporting documentation

2. Provide electronic version of Project Documentation at the end of the project and as needed during construction.
3. Provide periodic written project status reports and on as needed basis during the duration of the work including:
 - a. Immediate reports regarding urgency, accident, claim, safety concerns, impending liability or similar information
 - b. Daily inspection reports
 - c. Weekly progress reports including summary of what has been completed and two week look ahead of what is expected to be completed
 - d. Monthly status report including: status of the project, revised schedule compared with baseline schedule, current expenditures and budget, milestones for next month
4. Maintain project master schedule incorporating contractor schedules, holidays, meeting dates, milestones, and other information necessary for project management. The master schedule shall be updated regularly and at least monthly to provide current progress reports. Actual progress shall be tracked in comparisons with baseline schedule.

C. Change in Services

Client may order changes in scope or character of service, either decreasing or increasing the amount of Consultant's services, and if necessary, changing the character of services. In the event that such changes are ordered, Consultant is entitled to full compensation for all services performed and expenses incurred prior to receipt of notice of change.

D. Termination of Agreement

In the event the project is terminated or indefinitely suspended in the manner herein provided, Verde Design shall turn over copies of any and all documents completed to that date. Verde Design shall be entitled to compensation up to and including said termination date. Original work shall remain the property of Verde Design.

EXHIBIT B

COMPENSATION SCHEDULE

Payment for services shall be 5.5% of actual construction contracts manage to complete the above services. Estimated total construction cost are estimated at \$2,500,000. For work beyond the estimated contract cost of construction that exceed \$2,500,000 shall be submitted as extra services.

Labor Fees

\$130,000

<u>Reimbursable & Expenses</u>	<u>\$ 7,500</u>
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Total design fees are not to exceed time and materials of	\$137,500.
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Charge Rate Schedule
Effective until December 31, 2015

The following chart outlines the current charge rate for professional and office costs. Reimbursable rates and expenses are shown at the bottom.

Project Rates

Principal	\$195.00 per hour
Project Manager/Construction Manager	
Level Four	\$180.00 per hour
Level Three	\$160.00 per hour
Level Two	\$145.00 per hour
Level One	\$130.00 per hour
IT Manager	\$150.00 per hour
CAD Manager	\$130.00 per hour
Project Designer	\$125.00 per hour
Job Captain/Staff Engineer/Construction Administrator	\$120.00 per hour
Draftsperson Level II	\$105.00 per hour
Draftsperson Level I	\$100.00 per hour
Project Administrator	\$80.00 per hour
Intern	\$70.00 per hour

Reimbursable Rates

Blueprints, Printing and Reproductions	Cost plus 10%
Sub Consultant Services	Cost plus 10%

Reimbursable Expenses

Blueprints and Reproductions	Travel Expenses
Photography	Parking and Toll Expenses
Models and Renderings	Permit Fees
Postage/Overnight Mail Service	Courier Delivery Service

EXHIBIT C
INSURANCE DOCUMENTS

MEETING MINUTES CITY OF MILPITAS

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, November 3, 2015
Time: 6:00 PM Closed Session / 7:00 PM Open
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

CALL TO ORDER Mayor Esteves called the meeting to order at 6:00 PM. City Clerk noted the roll.

PRESENT: Mayor Esteves, Vice Mayor Montano, Councilmembers Barbadillo, Giordano and Grilli

ABSENT: None

CLOSED SESSION City Council convened in Closed Session to discuss three litigation matters.

City Council then convened in Open Session at 7:22 PM.

ANNOUNCEMENT No announcement out of closed session.

PLEDGE Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

INVOCATION Councilmember Grilli invited Mr. Cary Matsuoka, Superintendent of Milpitas Unified School District to provide a prayer to start the meeting.

MEETING MINUTES Motion: to approve the minutes of October 20, 2015 City Council meeting

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

SCHEDULE OF MEETINGS Motion: to approve Council Calendar/Schedule of Meetings for November 2015

Motion/Second: Councilmember Grilli/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

PRESENTATIONS Mayor Esteves made several presentations at the meeting.

The Mayor commended the Milpitas winners at 2015 Synopsys Championship. Santa Clara Valley Science and Engineering Fair Association representative Sandra Meditch explained the championship and thanked the Mayor for commending: Prathik Kakariamudi (Merryhill School Milpitas), Aditya Umes Udgaonkar (Merryhill School Milpitas), Victoria Truong (Merryhill School Milpitas) and Hilal Atesoglu (Magnolia Science Academy).

The Mayor commended student Tyler Nguyen for participation as a US National Taekwondo team member in recent competition.

He also commended and thanked Mr. Rene Briones, a long-time Troop and ScoutMaster for the Boy Scouts, a Bicycle Pedestrian Advisory Commissioner along with other community contributions, upon his departure from Milpitas.

PUBLIC FORUM

Thelma Batilo, Milpitas resident, asked for an agenda item on November 17 for her Special Kids & Adults Day, which she and other were planning to host a second annual celebration related to a special olympics-type event for challenged children and adults on Sunday, April 24, 2016. She hope to have it at the Milpitas Community Center, and asked specifically to partner with the City on the event with the Milpitas Lions Club.

Robert Marini, Milpitas resident, referred to the water rate notice sent out to the public recently, where he found no reference to the \$2.5 million bond, putting the City and ratepayers in debt for 30 years. He listed various objections to the notice, fees, and expenses for utility services. Also, he asked for agenda item No. 4 (Council subcommittee) to come off the consent calendar.

Voltaire Montemayor, Milpitas resident, talked about the number of high school enrollees, and a need to find a place for another high school, for swimming and taekwondo, other sports.

Rob Means, Milpitas resident at 1421 Yellowstone Ave., spoke on PRT capacity and explained recent technology and handed out a flyer with further information for the Council.

Tom Valore, Milpitas resident, referred to major decisions for procurements for hauling and disposal contract for garbage coming up in February. It would have a big impact on every resident and it appeared that work so far had been objective. However, it could get to be subjective when it comes to City Council decision-making.

ANNOUNCEMENTS

City Manager Tom Williams announced that on Wednesday, November 11, the City would honor all veterans on that holiday with a ceremony starting at 9:00 AM at the outdoor Veterans Plaza.

Vice Mayor Montano had attended Senator Wieckowski's address on October 29, presenting local heroes, including Milpitas Police Officer Eric Emmanuele. She attended that event along with Councilmember Marsha Grilli.

Mayor Esteves announced that Milpitas High School students were sponsoring the annual Jack Emory Food Drive for food donations this month, going to the Milpitas Food Pantry.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. None were reported.

APPROVAL OF AGENDA

Motion: to approve the meeting agenda, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

Councilmember Giordano requested to remove agenda item no. 4 (new Council subcommittee) based on the request from a resident in the audience.

Motion/Second: Councilmember Giordano/Councilmember Barbadillo

Motion carried by a vote of: AYES: 5
NOES: 0

***2. Odor Report Update**

Received the update of the odor control report.

***3. Commission Appointment**

Newly appointed Raghu Reddy as Alternate No. 2 on the Economic Development Commission to a term that will expire in April of 2016.

City Attorney Chris Diaz read aloud the title of Ordinance No. 38.823, “An Ordinance of the City Council of the City of Milpitas Amending Chapter 10 of Title XI of the Milpitas Municipal Code (Zoning Code), Sections 2, 13.11, and 24.04, Tables 57.04-1 and 64.02-1, and Adding Section 15, Relating to Special Events and Activities.”

(2) Motion: to waive the first reading beyond the title of Ordinance No. 38.823

Motion/Second: Councilmember Barbadillo/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(3) Motion: to introduce Ordinance No. 38.823 amending the City of Milpitas Zoning Code to include provisions relating to special events and activities

Motion/Second: Councilmember Barbadillo/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

4. New Subcommittee

Mayor Esteves asked if any specific Councilmember wanted to volunteer to serve on the new Communications subcommittee, beyond Councilmember Grilli (and himself). No response was heard.

Robert Marini, Milpitas resident, asked why the City Council was forming a new Subcommittee for communications after it had just hired a firm for \$180,000. He wanted to know what was to be gained by this action.

Mayor Esteves expressed his reason for the request for the new subcommittee. It was to review communications work plans, review press releases and other written materials on major information to the public, prior to that information being distributed. The City Manager commented that he expected much of the review to happen by e-mail communication and to schedule meetings only when needed.

Councilmember Giordano thought this was a terrific idea, as an outgrowth of having the public relations firm. She supported the idea.

Mayor Esteves invited comment from the audience.

Voltaire Montemayor, Milpitas resident, believed it was like a screening for consultancy with the subcommittee.

Motion: to receive the Mayor’s recommendation and to approve formation of a new City Council Communications Subcommittee, with he and Councilmember Grilli as the appointed members

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

NEW BUSINESS

6. Report from PG&E rep.

Planning Director Bill Ekern introduced Anthony Lin, Government Relations Representative for Pacific Gas & Electric, who came before the City Council to talk about its Community Underground Pipeline safety project and outreach to municipalities.

Mr. Lin then introduced Darin Cline, Government Relations, Community Pipeline Safety Initiative, and Greg Saenz, Senior Vegetation Program Manager. The men discussed some issues with trees in the community, and the need to remove trees and replace some vegetation for safety purposes. Mr. Saenz described electric lines and safety measures needed with regard to landscaping and trees, including removing some vegetation and landscaping, specifically trees along McCarthy Blvd.

Vice Mayor Montano asked about the trees at McCarthy Ranch. She wanted to ensure the PG&E staff was aware of recent efforts by the Community Advisory Commission to encourage and to plant more trees throughout the City.

Councilmember Grilli asked if any of the trees were historical trees that PG&E wanted to remove. The City Manager responded no.

Timeframes for tree removal would be by the end of this year 2015, PG&E reported. This was especially in preparation prior to the anticipated “el niño” weather pattern expected in early 2016.

Councilmember Barbadillo asked if any of the trees to be removed were in residential housing areas of the City. PG&E staff replied about 10% of those in Milpitas on their list.

Mayor Esteves had several questions for the utility, including who would resolve disagreements about the removal of a tree if a homeowner objected. PG&E responded that it had over 90% success in tree removal on homeowner properties to date, with the bottom line as safety for everybody.

Next, the Mayor invited audience members to comment.

Bob Nunez, a resident of Villa Landings in Milpitas, referred to a letter his homeowners association had received two months ago from PG&E about removal of trees near electric lines on their property, being too close. A contractor had performed removal work and the association received only a small amount from PG&E in return to replant landscaping. He thanked the Mayor in particular for questioning who would resolve any disputes.

Robert Marini, Milpitas resident, felt if no letter was received by December, then there was no issue at one’s home. There was some contradiction and concern for safety, and potential cyber attacks on communication lines.

Voltaire Montemayor, Milpitas resident, was in between when it came to danger. A deep problem could not be stopped. He was concerned about lightening rod, live wire, tree roots dead or alive, and corrosive pipes which were acidic.

Motion: to accept the oral report from PG&E representatives, after providing comments to the utility’s staff

Motion/Second: Councilmember Giordano/Councilmember Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

ADJOURNMENT

Mayor Esteves adjourned the City Council meeting at 9:03 PM.

The foregoing minutes were approved by the Milpitas City Council on November 17, 2015.

**Mary Lavelle,
Milpitas City Clerk**